SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to the following Members (at the request of Mr. MARTIN of Nebraska):

Mr. LINDSAY, for 30 minutes, June 10, 1964, to revise and extend his remarks and include extraneous matter.

Mr. BROMWELL, for 15 minutes, June 11, 1964, to revise and extend his remarks and include extraneous matter.

Mr. MCDOWELL (at the request of Mr. MATSUNAGA), for 30 minutes, today; to revise and extend his remarks and to include extraneous matter.

EXTENSION OF REMARKS

By unanimous consent, permission to extend remarks in the CONGRESSIONAL RECORD, or to revise and extend remarks, was granted to:

Mr. WILLIAMS and to include a speech.

Mr. ROGERS of Florida in his remarks during the Committee of the Whole on H.R. 11380 and to include a letter from the Agency for International Development.

Mr. RYAN of New York and to include certain extraneous material in his remarks during general debate on H.R. 11380.

(The following Members (at the request of Mr. MARTIN of Nebraska) and to include extraneous matter:)

Mr. BEERMANN.

Mr. FULTON of Pennsylvania.

Mr. WYMAN

(The following Members (at the request of Mr. MATSUNAGA) and to include extraneous matter:)

Mr. CELLER.

Mr. MURPHY of Illinois.

Mr. EDWARDS.

Mr. PUCINSKI.

ADJOURNMENT

Mr. MATSUNAGA. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 5 minutes p.m.), under its previous order, the House adjourned until tomorrow, Thursday, June 11, 1964, at 11 o'clock a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2156. A letter from the Comptroller General of the United States, transmitting a report on the review of the contract target price negotiated in September 1960 for Department of the Air Force fixed-price incentive contract AF-04(647)-684 with American Bosch Arma Corp., Arma Division, Garden City, N.Y., disclosed that the negotiated target cost was overstated by $216,153. Unless adjusted, this overstatement will result in increased costs to the Government in the form of unwarranted profits to the contractor of $52,958; to the Committee on Government Operations.

2157. A letter from the Comptroller General of the United States, transmitting a report relating to the audit of the U.S. Study Commission, Southeast River Basins, for the period August 28, 1958, and was terminated December 23, 1963; to the Committee on Government Operations.

2158. A letter from the Administrator, National Aeronautics and Space Administration, transmitting a report to the Committee on Science and Astronautics of the House of Representatives on the use of $1,350,000 of funds of the National Aeronautics and Space Administration for the construction of research facilities at Cornell University, Ithaca, N.Y., pursuant to 77 Stat. 141, 142 and 77 Stat. 425, 439; to the Committee on Science and Astronautics.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DELANEY: Committee on Rules. House Resolution 747. A resolution providing for the consideration of H.R. 1835. A bill to amend section 2254 of title 28 of the United States Code in reference to applications for writs of habeas corpus by persons in custody pursuant to the judgment of a State court; without amendment (Rept. No. 171). 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. ASHMORE:

H.R. 11546. A bill to validate certain payments made to employees of the Forest Service, U.S. Department of Agriculture; to the Committee on the Judiciary.

By Mr. LIPSCOMB:

H.R. 11547. A bill to amend title II of the Social Security Act to increase the amount of outside earnings permitted each year without any deductions from benefits thereunder; to the Committee on Ways and Means.

By Mr. NELSEN:

H.R. 11548. A bill to amend section 7701 of the Internal Revenue Code of 1954 to clarify the tax status of certain professional associations and corporations formed under State law; to the Committee on Ways and Means.

By Mr. PUCINSKI:

H.R. 11549. A bill to amend chapter 57 of title 39, United States Code, so as to authorize the free use of the mails in making reports required by law of certain payments to others; to the Committee on Post Office and Civil Service.

By Mr. QUIE:

H.R. 11550. A bill to amend title II of the Social Security Act to increase all survivors' benefits, to permit the payment of child's insurance benefits beyond age 18 for children attending school, and to increase the amount of outside earnings permitted without deductions from benefits; to the Committee on Ways and Means.

By Mr. RIEHLMAN:

H.R. 11551. A bill to authorize the sale of certain coins at their numismatic value, and for other purposes; to the Committee on Banking and Currency.

By Mr. SNYDER (by request):

H.R. 11552. A bill to amend the Federal Aviation Act of 1958 to require the Civil Aeronautics Board to enforce the duty imposed on each carrier to provide adequate service in connection with the transportation authorized by its certificate of public convenience and necessity; to the Committee on Interstate and Foreign Commerce.

By Mr. TALCOTT:

H.R. 11553. A bill to amend the Internal Revenue Code of 1954 to allow a taxpayer an additional income tax exemption for a dependent who has attained age 65 or is blind; to the Committee on Ways and Means.

By Mr. LIBONATI:

H.R. 11554. A bill to establish the "I Will" National Monument Commission, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. MORSE:

H.R. 11555. A bill to amend title II of the Social Security Act to provide a 10-percent across-the-board increase in benefits thereunder, and for other purposes; to the Committee on Ways and Means.

By Mr. ROYBAL:

H.R. 11556. A bill to authorize the coordinated development of the water resources of the Pacific Southwest, and for other purposes; to the Committee on Interior and Insular Affairs.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BARRY:

H.R. 11557. A bill for the relief of Jan Onnik Bahadir; to the Committee on the Judiciary.

By Mr. BOLAND:

H.R. 11558. A bill for the relief of Louis Discenza; to the Committee on the Judiciary.

By Mr. DOWNING:

H.R. 11559. A bill to incorporate the Holland Society of America; to the Committee on the District of Columbia.

By Mr. GUBSER:

H.R. 11560. A bill for the relief of Mrs. Antonia Farina Avenger; to the Committee on the Judiciary.

By Mr. GURNEY:

H.R. 11561. A bill for the relief of Mrs. Maria Mercedes Porter; to the Committee on the Judiciary.

By Mr. JOHNSON of California:

H.R. 11562. A bill to authorize the Secretary of the Interior to sell Enterprise Rancheria No. 2 to the State of California, and to distribute the proceeds of the sale to Henry B. Martin, Stanley Martin, Ralph G. Martin, and Vera Martin Kiras; to the Committee on Interior and Insular Affairs.

By Mrs. KELLY:

H.R. 11563. A bill for the relief of Dan and Sarah Gwily; to the Committee on the Judiciary.

By Mr. KILBURN:

H.R. 11564. A bill for the relief of Charles and Claude Pomerat and children, Jean Marie and Silvain Mirsamadzadeh, and Charles Hadrien Pomerat; to the Committee on the Judiciary.

By Mr. LESINSKI:

H.R. 11565. A bill for the relief of Weronika Plawecki; to the Committee on the Judiciary.

By Mr. MURPHY of New York:

H.R. 11566. A bill for the relief of Anastasios Alexander Hoidas; to the Committee on the Judiciary.

By Mr. SENNER:

H.R. 11567. A bill for the relief of Fay Lun Mar; to the Committee on the Judiciary.

PETITIONS, ETC.

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

922. The SPEAKER presented a petition of Henry Stoner, Avon Park, Fla., relative to requiring the Committee on the Judiciary to put some serious thought to the getting of writs of habeas corpus by epileptics after said epileptics have "come to"; to the Committee on the Judiciary.

SENATE

WEDNESDAY, JUNE 10, 1964

(Legislative day of Monday, March 30, 1964)

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

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

Our Father, God, once again by Thy mercy at the day's beginning, as we toil in the valley of decisions, we would lift our gaze from the tyranny of drab details to the beckoning splendor and the heavenly vision, to which we dare not be disobedient. Grant us this day to live on the altitudes of our highest aspirations. Give to us such a revealing sense of the aching need of our distraught world as will make us glad and eager sharers with Thee in its redemption from all that brings havoc and horror on the earth which could be so fair.

As servants of Thine, and of the peoples of this divided earth—stricken, groping, starving, and reaching out for more abundant life, save us from false choices, and guide our hands and minds to heal and feed and build and bless.

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

CIVIL RIGHTS ACT OF 1963

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

The ACTING PRESIDENT pro tempore. Under the unanimous-consent agreement, the time between 10 and 11 o'clock today will be equally divided, and controlled by the majority leader [Mr. MANSFIELD] and the Senator from Georgia [Mr. RUSSELL].

AMENDMENTS NOS. 1047 AND 1048

Mr. ERVIN. Mr. President, I send forward two amendments which are nothing in the world but changes and a modification of an existing amendment; and I ask unanimous consent that I be permitted to submit them at this time, that they be considered as read for all purposes under the rule, and that they may lie on the desk, to be called up.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from North Carolina? The Chair hears none, and it is so ordered.

The amendments are as follows:

AMENDMENT NO. 1047

On page 74, between lines 2 and 3, add a new section reading as follows:

"SEC. 1102. No person should be put twice in jeopardy for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this Act; and an acquital or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for a specific crime based upon the same act or omission."

Renumber sections 1102, 1103, 1104, and 1105, respectively, as sections 1103, 1104, 1105, and 1106.

AMENDMENT NO. 1048

On page 54, between lines 7 and 8, add a new section reading as follows:

"SEC. 1004. No person should be put twice in jeopardy for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this Act; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for a specific crime based upon the same act or omission."

Mr. MANSFIELD. Mr. President, I yield myself 10 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized for 10 minutes.

Mr. MANSFIELD. Mr. President, the calendar of business reads "Legislative day, Monday, March 30, 1964." If my mathematics are correct, that means that the last legislative day the Senate has had was 71 days ago. If my memory is correct, we are now in our third month and first legislative day of debate, in one form or another, of House bill 7152.

The Senate now stands at the crossroads of history, and the time for decision is at hand. I should like, if I may, to read to the Senate a letter:

DEAR SENATOR MANSFIELD: I am a lifelong resident of Montana, I am 29 years old, and the mother of four children. I am white. In general, I have considered myself a good citizen of my country, I have voted in every election since my 21st year, I have tried to learn the issues and policies of each candidate, of each party, and I voted to the best of my personal judgment. I have formed opinion on various matters, and adopted ideas on specific policies. But through it all, I realize I have been a listener, a receiver, an appreciator, a bystander. A bystander can remain an innocent bystander up to a point, after which he must take part.

How can we, as responsible Americans, continue talking, arguing, bickering over civil rights as though the privileges, responsibilities, and birthrights of a great percentage of our people were favors or rewards to be handed out by a benevolent few?

I am white. By a simple accident of birth, I was allowed to grow up believing in the laws of God and our country. As a child, I learned to recite the Preamble to the Constitution, I learned the Bill of Rights, and memorized the Lincoln Gettysburg Address. I accepted these things as truth. I grew up with the right to feel that I, as an individual, was as good as anyone else, that I had the opportunity to climb as high as my ability, my intelligence, and my ambition would take me. While I did not learn to consider myself as a superior being, I could look upon myself with a lack of inferiority. I did not learn to regard my color with a great sense of pride, but never with guilt or shame.

I was conceived by a pair of good, respectable, hard-working white parents. I was allowed to grow and mature, to have faith in myself and my future, and when I married and gave birth to my lovely children, to have faith in them and their future.

I know that my children may go to the school nearest our home. I know that when I give my children a coin to buy an ice cream cone, that coin is good in any store in town. When we are traveling, we can stop at any hotel or motel of our choice. When we go out to eat, we may do so in any cafe or club we wish and can afford. I can sit in any vacant seat in a bus, I can use a public restroom, and if I am thirsty, I may quench my thirst at any public drinking fountain. These things I consider my rights. I take them for granted and know that no one may deny me these rights.

This morning, the thought occurred to me, that by that same accident of birth, I could have been conceived by a pair of equally good respectable hard-working Negro parents. The process is the same, but what immense differences there would have been in my life and upbringing.

How heartbreaking it must be for a child to have to learn that his future is sharply limited even if his intelligence and his ability is not. How confusing it must be for a child to learn that he may not buy an ice cream cone or a coke in the same shop as a lighter skinned child, even though his dime has the same value as the other. How could my parents have logically explained to me that a dime from a white hand is worth 10 cents, but that same coin in a brown or black hand is "unacceptable"?

Civil rights, Negro rights, is an inflammatory issue everywhere. I hear hate and prejudice and ignorance spouted off in any gathering of people. Everyone has a different reason for feeling that liberties should be denied to colored people. I have heard many, most of them are personal, involving a single bad experience he or she or one of his or her friends or acquaintances once had.

When a person refuses a hamburger on a Friday evening with the statement "I am a Catholic," I accept it. This is a religious belief, and after all, who is harmed by the refusal of a hamburger. When a drink or a dessert is refused with the statement "I am on a diet," I accept that. It is a personal problem, a self-improvement problem. But I cannot accept it when someone refuses to recognize the rights for dignity, pride, education, and decent living to millions of our American people. This is not a religious belief, I don't believe God favors a man's soul simply because of the color of the body it was temporarily housed in. Is it then a matter of self-improvement? Are we white people so insecure and deficient of self-respect that we must hold firm to the inferiority of others so that we may continue to enjoy our superiority?

My opinions were recently brushed aside by an acquaintance when he gently reminded me that I do not know Negro people and so have no personal knowledge of the problem. He was right. I can count the number of Negro people I have known on the fingers of both hands. But does that remove me from this problem?

I did not know a single one of the millions of Jews enslaved and murdered by the Nazis during World War II, but I have the right to deplore and renounce those atrocities. I did not know personally any of the hundreds of men killed during the Japanese attack on Pearl Harbor, but I was entitled to feel the

anger and shock of the attack. I had no friends or relatives living in Alaska during the recent disastrous earthquake, but I could have sympathy and a desire to help the stricken people.

I did not personally know President Kennedy, but I experienced a genuine grief and a deep personal sense of loss when he was killed. I have met none of the American astronauts, but I found myself brushing away tears of pride and relief when each of them returned safely to earth. So, while it is true that I know little of Negro people, almost nothing of living among them, I cannot believe that I or anyone must remain immune and removed from the civil rights struggle.

We, as white Americans, may certainly point with pride to our society which produces such personalities as Roosevelt, Eisenhower, MacArthur, Kennedy, Johnson, Henry Ford, Helen Hayes, Jacqueline Kennedy, the Barrymores, Bing Crosby, Will Rogers, Mark Twain, Ernest Hemingway, Babe Ruth, Mickey Mantle and on and on down an endless list of contributors to our country, our arts, our dignity, our basic culture. But this list of fine Americans would not be complete without including George Washington Carver, Dr. Ralph Bunche, Jesse Owens, Jackie Robinson, Frank Yerby, Bill Robinson, Willie Mays, Nat "King" Cole, Louis Armstrong, Sidney Poitier, Marian Anderson, Harry Belafonte.

I am proud of all these people, I am proud to share a heritage with them. I am proud of being an American.

But at night, when I kiss my children good night, I offer a small prayer of thanks to God for making them so perfect, so healthy, so lovely, and I find myself tempted to thank Him for letting them be born white. Then I am not so proud, neither of myself nor of our society which forces such a temptation upon us.

And that is why I don't feel that this is a southern problem, it is a northern problem, a western problem, an eastern problem. It is an American problem, for all Americans. It is my problem.

I am only one person, one woman. I wish there was something I could do in this issue. I want to help. The only way I know how to start is to educate my children that justice and freedom and ambition are not merely privileges, but their birthrights. I must try to impress upon them that these rights must be given, not held tightly unto themselves, for what cannot be given, we do not really have for ourselves.

These are the thoughts of but one of your citizens. I realize that no earth-shaking changes will develop from having written this letter, but it is a beginning. If more can be done by people like me, please tell me what I can do. Thank you for your time.

Sincerely yours,

———— ————.

The ACTING PRESIDENT pro tempore. The Senator from Montana has consumed 12½ minutes.

Mr. RUSSELL. Mr. President——

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Georgia.

FORUM OF FREE DEBATE

Mr. RUSSELL. Mr. President, within the hour, the Senate will decide whether it will abandon its proud position as a forum of free debate by imposing cloture or gag rule upon its Members.

I know the debate has been long and extremely tedious for some Senators. The historic significance of the debate lies, not in the length of time the issue has been before the Senate, not in the number of words spoken on the floor of the Senate, but in the results. Historians will forget the number of hours the Senate has spent in debating the bill. Instead, their concern will be with making their evaluation of the results.

For the true significance of the debate, we must look to the fundamental issues raised by the bill. We must weigh the magnitude of its impact upon our system of government.

Mr. President, at this hour we must decide whether we will proceed, in summary fashion, to gag the Senate; or whether we will proceed, in orderly fashion, to debate comprehensive amendments and to vote upon them, in a conscientious, studied effort to enable the Senate to develop a definitive measure which will not be an unbridled grant of power to appointive officers of the Government.

There is little doubt that the questions involved go to the very heart of our constitutional system. There can be little doubt that if gag rule is imposed and if the bill in its present form is enacted, without giving proper deliberation to amendments, not only will there be a most harmful impact upon our social order, as was stated by the minority leader [Mr. DIRKSEN] in the early days of the debate, but—in addition—the effect upon our economic system and upon what we are proud to call the American way of life will be both far reaching and devastating.

The hours have been long; the discussion has totaled many words. But there are many words in the bill, and many of them are not clear in their meaning, their application, and their significance. The scope of the bill is as wide as our system of government. Within the past few days, the President of the United States stated that this is the most far-reaching, comprehensive bill on this subject ever to be considered by Congress.

Mr. President, a mere totaling of the number of days, the number of hours, the number of speeches, or the number of amendments that may be pending at the desk may seem important today; but they will be completely lost from sight when those who write the history of this period consider and evaluate the impact of the bill upon our governmental system and our economic order.

AMERICAN SYSTEM FINEST

Ours is not a perfect system; the American system of law and order and economy has many defects. But, Mr. President, with all its errors and all its weaknesses, it is the finest system yet devised by man. It has brought more of the good things of life, more happiness, and a greater degree of freedom to more people than have ever before been enjoyed by any other people, under any other governmental system. The American system gives opportunity to those to whom the Senator from Montana referred in such touching terms. The fact that he could call the roll of a long list of Negro citizens who have achieved prominence in so many fields is, of itself, proof that there is no insuperable barrier to those who happen to be members of the Negro race. He referred to religion; but the very fact that the Members of the Senate include Jews, Protestants, Catholics, and Mormons is further proof that our system of government offers unprecedented opportunities to all our people; for if they have the will to achieve, they have the opportunity to do so.

The fact that two Members of the Senate are women, the fact that some of the Members of the House of Representatives are Negroes, and the fact that other Negroes hold high positions in the executive branch of the Government of the United States offers additional clear proof that the American system of government has not failed, but—instead—has extended unparalleled opportunities to all who are willing to strive ceaselessly to make use of them.

O Mr. President, the argument the Senator from Montana made for this bill could also be made for a piece of legislation that would take away from those who have, and give to those who have not.

He spoke of the heartbreak a poor child might experience because he could not go to a certain place. But in this country there are thousands of poor children, of every race, who cannot go to every place to which they may desire to go; and there are poor children who may look on in anguish when they see other children of their own age riding in limousines or other fine cars, whereas the parents of those poor children cannot afford to own such automobiles, or perhaps cannot afford to own automobiles of any sort.

AN EMOTIONAL APPEAL

Mr. President, the argument the Senator from Montana made in behalf of this bill has emotional appeal—but no more emotional appeal than that which could be made for a purely socialistic or communistic system that would divide and distribute among all our people every bit of the property and wealth of the people of these United States.

So, Mr. President, it is evident that the new system that some propose as a remedy, the new laws that some urge upon us, would only pull down those of our people who have been able to climb and to advance—both those who are white and those who are black, both those who are Protestants, those who are Catholics, and those who are Jews. We cannot help any group in our country by taking away or impinging upon the constitutional rights of all; we would only arrive at the lowest common denominator for all our people.

Mr. President, what does equality mean?

It does not mean that a child can stand on the street corner and cry for a car in which he sees another child of his own age riding. That is not equality. Equality does not mean that one person shall be admitted to a club merely because he desires to be, and because to be refused admission would cause him embarrassment or anguish. Our system never contemplated any such "equality" as that. If it had, we would not have achieved our present greatness; instead, we would be wandering in the chaos, the poverty, and the distress that accompany tyrannical government, whether it be Fascist or whether it be Communist.

No, Mr. President, equal rights in this land of ours means that each citizen has an equal opportunity to acquire property through honest means, that once that property has been acquired he has a right to exercise dominion over it. Under our system, many Negroes have accumulated great amounts of property; and the names recounted by the Senator from Montana could have included those of many Negroes of great wealth and who are worth millions of dollars.

There are Negroes in this country who preside over banks with tens of millions of dollars of deposits, who operate insurance companies that have assets running into hundreds of millions of dollars, and who occupy high position in every avenue of life in this land. This, I think, is truly remarkable when we consider that the people this bill is designed to aid are only 100 years removed from slavery, and that most of them, until the last few years, lived in the poorest section of the country—an area that little more than 25 years ago was described by a President of the United States as the Nation's economic problem No. 1, where both whites and blacks were denied opportunities.

Mr. President, the fact that so many Negroes have achieved eminence, and even preeminence, in our society, in our educational, in medical, in cultural, and in literary lines, demonstrates that true equality is the equality to own and control property honestly gained.

UNDERMINING THE FOUNDATION

But we are nibbling away at that cornerstone of our whole system. There will never be a time, Mr. President, when every person in this country will own and control exactly the same amount of property. Should there be such a time it will mean that we are a dead land. It will mean that we have fallen from the eminence that we now enjoy into the very pits of perdition and despair. It will mean that we have destroyed that which the Founding Fathers gave us. It would mean that we have had no appreciation whatever for our heritage, which means the equal right to own and exercise dominion over property. It is not equality to pass laws that give any group, whoever they may be, the right to violate the property rights of another that are guaranteed by the Constitution.

Life, liberty, and property—in that order—are spelled out in the Constitution of the United States as our greatest civil rights. I care not how much politics may be involved, and it matters not how great may be the emotional appeal. We cannot strike down one of those rights without gnawing into the very vitals of constitutional government in this land.

Mr. President, of course this bill would strike down and destroy many rights and powers which, since the foundation of our Government, have properly belonged to the several States. The bill would increase the power of the great national bureaucracy, and thereby would take from our people essential rights.

We often hear the argument that much existing Federal legislation is of a beneficial nature, and that therefore additional Federal laws to provide other programs that will benefit the people should be enacted. Two examples of programs of that type are the social security program and the school-lunch program.

But, Mr. President, have we now seen the dawn of the day when—in the name of passing a law to help one group of our people—we shall insist upon the destruction of some of the most important rights of all Americans? Would that be equality for all the American people?

PRESSURES FOR BILL

I know that great pressures have been brought to bear on Senators by both political parties and by the President of the United States to vote for this bill. State chairmen and other officials of both parties have been calling and telegraphing Senators since the day when this proposed legislation came before the Senate. The leaders of the great labor organizations also have brought pressure and have threatened disapproval of Senators who vote against the bill.

I have observed with profound sorrow the role that many religious leaders have played in urging passage of the bill, because I cannot make their activities jibe with my concept of the proper place of religious leaders in our national life. During the course of the debate, we have seen cardinals, bishops, elders, stated clerks, common preachers, priests, and rabbis come to Washington to press for the passage of this bill. They have sought to make its passage a great moral issue. But I am at a loss to understand why they are 200 years late in discovering that the right of dominion over private property is a great moral issue. If it is a great moral issue today, it was a great moral issue on the day of the ratification of the Constitution of the United States. Of course, this is not, and cannot be, a moral question; however it may be considered, it is a political question.

Day after day, men of the cloth have been standing on the Mall and urging a favorable vote on the bill. They have encouraged and prompted thousands of good citizens to sign petitions supporting the bill—but all without the knowledge of the effect of what they were demanding of the representatives in the Congress of the United States.

This is the second time in my lifetime an effort has been made by the clergy to make a moral question of a political issue. The other was prohibition. We know something of the results of that.

Mr. President, I realize full well that the authors of the bill have sought, by means of such vast grants of power to the Attorney General, to insure enforcement of the drastic and coercive provisions of the bill, in total disregard of the customs and mores of the people who will be most vitally affected by this bill.

I know, and all other Members of the Senate know, that the bill has been drafted in such a way that its greatest impact will be on the States of the old Confederacy. Some Senators from other sections have sent out newsletters assuring their constituents that the bill does not affect them because their States have statutes dealing with equal accommodations and fair employment, and thus are exempted from the most punitive provisions. But make no mistake about it: If this bill is enacted into law, next year we will be confronted with new demands for enactment of further legislation in this field, such as laws requiring open housing and the "busing" of children.

The country is becoming enmeshed in a philosophy that can only lead to the destruction of our dual system of sovereign States in an indestructible Union. This is the system that has produced the American way of life and has afforded opportunity to all.

Mr. President, our system may have its defects; but, after all, it has brought more benefits to more people than any other system known to mankind. The truth of the matter is that many so-called "impoverished Americans" enjoy a standard of living and opportunities for advancement under our system that make them the envy of most of the other peoples of the world.

CONTRARY TO CONSTITUTION

Mr. President, those of us who have opposed this bill have done so from a profound conviction that the bill not only is contrary to the spirit of the Constitution of the United States, but also violates the letter of the Constitution.

We have opposed it because the broad abdication of power and authority by the legislative branch to the executive branch that it provides would destroy forever the doctrine of separation of powers. This great doctrine was devised by our forefathers as a bulwark against tyranny; and over the years it has protected our liberties and way of life.

But the bill goes even further. It confers upon the Attorney General the power to control many facets in the daily lives and in the private lives of the people of the United States. It greatly broadens Federal supervision and regulation—going into new areas—over the activities of business, commerce, and industry, which are already heavily burdened and hampered by existing law.

One of the saddest aspects of the bill is the general enlargement of the Federal Government over affairs that have heretofore been considered the concern of the States and local governments. I appeal to the Senate to consider the broad aspects of this legislation, and not to be influenced by the frustrations of the hours that have been spent in debate. I appeal to the Senate to vote down this gag rule with assurances that we can proceed to vote upon vital amendments without any lengthy debate. I appeal to Senators to rise above the pressures to which they have been subjected and to reject this legislation that will result in vast changes, not only in our social order, but in our very form of government.

Mr. MANSFIELD. Mr. President, I yield 2 minutes to the distinguished majority whip, the Senator from Minnesota [Mr. HUMPHREY]; and I yield the rest of my time to the distinguished minority leader, the Senator from Illinois [Mr. DIRKSEN].

The ACTING PRESIDENT pro tempore. The Senator from Minnesota is recognized for 2 minutes.

Mr. HUMPHREY. Mr. President, this issue has been burning for many weeks. The moment of great decision is now fast approaching.

In the Senate, the Constitution of the United States is on trial. The question is whether we will have two types of citizenship in this Nation, or first-class citizenship for all. The question is whether there will be two kinds of justice, or equal justice under the law for every American. The question is whether this Nation will be divided, or as we are taught in our youth in the pledge of allegiance, one Nation, under God, indivisible, with liberty and justice for all.

Mr. President, William Shakespeare in his great drama, "The Life of Henry V," reminds us how the immortal Henry addressed his soldiers before the Battle of Agincourt:

He that shall live this day, and see old age,
Will yearly on the vigil feast his neighbours,
And say, "To-morrow is Saint Crispian:"
* * * * *
This story shall the good man teach his son:
And Crispin Crispian shall ne'er go by,
From this day to the ending of the world,
But we in it shall be remembered: * * *

I say to my colleagues of the Senate that perhaps in your lives you will be able to tell your children's children that you were here for America to make the year 1964 our freedom year. I urge my colleagues to make that dream of full freedom, full justice, and full citizenship for every American a reality by their votes on this day, and it will be remembered until the ending of the world.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. RUSSELL. Mr. President, I yield 1 minute to the Senator from Louisiana.

AMENDMENTS NOS. 1049 AND 1050

Mr. LONG of Louisiana. Mr. President, I send to the desk two amendments, and ask that they be printed, considered as having been read, and lie on the table.

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

The amendments are as follows:

AMENDMENT No. 1049

On page 25, line 25, immediately after "assistance", insert a comma and the following "other than a program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty".

AMENDMENT No. 1050

On page 33, line 2, immediately after "assistance", insert a comma and the following "other than a program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty".

AMENDMENT NO. 1051

Mr. DIRKSEN. Mr. President, I yield 1 minute to the Senator from Utah.

Mr. BENNETT. Mr. President, I send an amendment to the desk, and ask that it be received, be considered as read, and lie on the desk.

The ACTING PRESIDENT pro tempore. Without objection, the request of the Senator is agreed to; and the amendment will be received, considered as having been read, printed, and lie on the desk.

The amendment (No. 1051) is as follows:

On page 44, line 15, immediately after the period, insert the following new sentence: "It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d))."

AMENDMENT NO. 1052

Mr. DIRKSEN. Mr. President, I submit an amendment, in the nature of a substitute, which includes the Morton amendment on jury trials, for amendment No. 656, which is now at the desk; and I ask that it be considered as having been read.

The ACTING PRESIDENT pro tempore. Without objection, the request of the Senator is agreed to; and the amendment will be received, printed, and will lie on the table.

The amendment (No. 1052), in the nature of a substitute for amendment No. 656, is to strike out all after the enacting clause and in lieu thereof insert the following:

That this Act may be cited as the "Civil Rights Act of 1964".

TITLE I—VOTING RIGHTS

SEC. 101. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and as further amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), is further amended as follows:

(a) Insert "1" after "(a)" in subsection (a) and add at the end of subsection (a) the following new paragraphs:

"(2) No person acting under color of law shall—

"(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

"(B) deny the right of any individual to vote in any Federal election because of an error or omission on any record or paper relating to any application, registration, 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; or

"(C) employ any literacy test as a qualification for voting in any Federal election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 (42 U.S.C. 1974–74e; 74 Stat. 88): *Provided, however,* That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

"(3) For purposes of this subsection—

"(A) the term 'vote' shall have the same meaning as in subsection (e) of this section;

"(B) the phrase 'literacy test' includes any test of the ability to read, write, understand, or interpret any matter."

(b) Insert immediately following the period at the end of the first sentence of subsection (c) the following new sentence: "If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any Federal election."

(c) Add the following subsection "(f)" and designate the present subsection "(f)" as subsection "(g)":

"(f) When used in subsection (a) or (c) of this section, the words 'Federal election' shall mean any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives."

(d) Add the following subsection "(h)":

"(h) In any proceeding instituted by the United States in any district court of the United States under this section in which the Attorney General requests a finding of a pattern or practice of discrimination pursuant to subsection (e) of this section the Attorney General, at the time he files the complaint, or any defendant in the proceeding, within twenty days after service upon him of the complaint, may file with the clerk of such court a request that a court of three judges be convened to hear and determine the entire case. A copy of the request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

"In any proceeding brought under subsection (c) of this section to enforce subsection (b) of this section, or in the event neither the Attorney General nor any defendant files a request for a three-judge court in any proceeding authorized by this subsection, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or, in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

"It shall be the duty of the judge designated pursuant to this section to assign the

case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

TITLE II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A) (i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operation of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) The provisions of this title shall not apply to a bona fide private club or other establishment not open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

SEC. 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

SEC. 203. No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202.

SEC. 204. (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

(b) In any action commenced pursuant to this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) In the case of an alleged act or practice prohibited by this title which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

(d) In the case of an alleged act or practice prohibited by this title which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a): *Provided,* That the court may refer the matter to the Community Relations Service established by title X of this Act for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: *Provided further,* That upon expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

SEC. 205. The Service is authorized to make a full investigation of any complaint referred to it by the court under section 204(d) and may hold such hearings with respect thereto as may be necessary. The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties.

SEC. 206. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

SEC. 207. (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this title shall be the exclusive means of enforcing the rights hereby created, but nothing in this title shall preclude any individual or any State or local agency from asserting any right created by any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy,

civil or criminal, which may be available for the vindication or enforcement of such right.

TITLE III—DESEGREGATION OF PUBLIC FACILITIES

SEC. 301. (a) Whenever the Attorney General receives a complaint in writing signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied equal utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 401 of title IV hereof, and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

SEC. 302. In any action or proceeding under this title the United States shall be liable for costs, including a reasonable attorney's fee, the same as a private person.

SEC. 303. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in any facility covered by this title.

SEC. 304. A complaint as used in this title is a writing or document within the meaning of section 1001, title 18, United States Code.

TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

Definitions

SEC. 401. As used in this title—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

Survey and report of educational opportunities

SEC. 402. The Commissioner shall conduct a survey and make a report to the President and the Congress, within two years of the enactment of this title, concerning the lack of availability of equal educational opportunities for individuals by reason of race, color, religion, or national origin in public educational institutions at all levels in the United States, its territories and possessions, and the District of Columbia.

Technical assistance

SEC. 403. The Commissioner is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Office of Education or other persons specially equipped to advise and assist them in coping with such problems.

Training institutes

SEC. 404. The Commissioner is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. Individuals who attend such an institute on a full-time basis may be paid stipends for the period of their attendance at such institute in amounts specified by the Commissioner in regulations, including allowances for travel to attend such institute.

Grants

SEC. 405. (a) The Commissioner is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of—

(1) giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation, and

(2) employing specialists to advise in problems incident to desegregation.

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Commissioner shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

Payments

SEC. 406. Payments pursuant to a grant or contract under this title may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way or reimbursement, and in such installments, as the Commissioner may determine.

Suits by the Attorney General

SEC. 407. (a) Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, title 18, United States Code.

SEC. 408. In any action or proceeding under this title the United States shall be liable for costs the same as a private person.

SEC. 409. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

SEC. 410. Nothing in this title shall prohibit classification and assignment for reasons other than race, color, religion, or national origin.

TITLE V—COMMISSION ON CIVIL RIGHTS

SEC. 501. Section 102 of the Civil Rights Act of 1957 (42 U.S.C. 1975a; 71 Stat. 634) is amended to read as follows:

"Rules of procedure of the Commission hearings

"SEC. 102. (a) At least thirty days prior to the commencement of any hearing, the Commission shall cause to be published in the Federal Register notice of the date on which such hearing is to commence, the place at which it is to be held and the subject of the hearing. The Chairman, or one designated by him to act as Chairman at a hearing of the Commission, shall announce in an opening statement the subject of the hearing.

"(b) A copy of the Commission's rules shall be made available to any witness before the Commission, and a witness compelled to appear before the Commission or

required to produce written or other matter shall be served with a copy of the Commission's rules at the time of service of the subpena.

"(c) Any person compelled to appear in person before the Commission shall be accorded the right to be accompanied and advised by counsel, who shall have the right to subject his client to reasonable examination, and to make objections on the record and to argue briefly the basis for such objections. The Commission shall proceed with reasonable dispatch to conclude any hearing in which it is engaged. Due regard shall be had for the convenience and necessity of witnesses.

"(d) The Chairman or Acting Chairman may punish breaches of order and decorum by censure and exclusion from the hearings.

"(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony. In the event the Commission determines to release or use such evidence or testimony in such manner as to reveal publicly the identity of the person defamed, degraded, or incriminated, such evidence or testimony, prior to such public release or use, shall be given at a public session, and the Commission shall afford such person an opportunity to appear as a voluntary witness or to file a sworn statement in his behalf and to submit brief and pertinent sworn statements of others. The Commission shall receive and dispose of requests from such person to subpena additional witnesses.

"(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

"(g) No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

"(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission shall determine the pertinency of testimony and evidence adduced at its hearings.

"(i) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that a witness in a hearing held in executive session may for good cause be limited to inspection of the official transcript of his testimony. Transcript copies of public sessions may be obtained by the public upon the payment of the cost thereof. An accurate transcript shall be made of the testimony of all witnesses at all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof.

"(j) A witness attending any session of the Commission shall receive $6 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 10 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day, shall be entitled to an additional allowance of $10 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

"(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpenas for the attendance and testimony of witnesses and the production of written or other matter at a hearing held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process.

"(l) The Commission shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including the established places at which, and methods whereby, the public may secure information or make requests; (2) statements of the general course and method by which its functions are channeled and determined, and (3) rules adopted as authorized by law. No person shall in any manner be subject to or required to resort to rules, organization, or procedure not so published."

SEC. 502. Section 103(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(a); 71 Stat. 634) is amended to read as follows:

"SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $75 per day for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b–2; 60 Stat. 808)."

SEC. 503. Section 103(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(b); 71 Stat. 634) is amended to read as follows:

"(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with the provisions of the Travel Expenses Act of 1949, as amended (5 U.S.C. 835–42; 63 Stat. 166)."

SEC. 504. (a) Section 104(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975c(a); 71 Stat. 635), as amended, is further amended to read as follows:

"Duties of the Commission

"SEC. 104. (a) The Commission shall—

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, or national origin or in the administration of justice;

"(3) appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, or national origin or in the administration of justice;

"(4) serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, or national origin, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, and transportation, or in the administration of justice;

"(5) investigate allegations, made in writing and under oath or affirmation, that citizens of the United States are unlawfully being accorded or denied the right to vote, or to have their votes properly counted, in any election of presidential electors, Members of the United States Senate, or of the House of Representatives, as a result of any patterns or practice of fraud or discrimination in the conduct of such election; and

"(6) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club or any religious organization."

(b) Section 104(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975c(b); 71 Stat. 635), as amended, is further amended by striking out the present subsection "(b)" and by substituting therefor:

"(b) The Commission shall submit interim reports to the President and to the Congress at such times as the Commission, the Congress or the President shall deem desirable, and shall submit to the President and to the Congress a final report of its activities, findings, and recommendations not later than January 31, 1968."

SEC. 505. Section 105(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(a); 71 Stat. 636) is amended by striking out in the last sentence thereof "$50 per diem" and inserting in lieu thereof "$75 per diem."

SEC. 506. Section 105(f) and section 105(g) of the Civil Rights Act of 1957 (42 U.S.C. 1975d (f) and (g); 71 Stat. 636) are amended to read as follows:

"(f) The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commissioner or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 102 (j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman. The holding of hearings by the Commission, or the appointment of a subcommittee to hold hearings pursuant to this subparagraph, must be approved by a majority of the Commission, or by a majority of the members present at a meeting at which at least a quorum of four members is present.

"(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there

to produce pertinent, relevant and nonprivileged evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof."

SEC. 507. Section 105 of the Civil Rights Act of 1957 (42 U.S.C. 1975d; 71 Stat. 636), as amended by section 401 of the Civil Rights Act of 1960 (42 U.S.C. 1975d(h); 74 Stat. 89), is further amended by adding a new subsection at the end to read as follows:

"(i) The Commission shall have the power to make such rules and regulations as are necessary to carry out the purposes of this Act."

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

Definitions

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided,* That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers: *Provided further,* That it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex or national origin and the President shall utilize his existing authority to effectuate this policy.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of section 716, (B) seventy-five or more during the second year after such date or fifty or more during the third year, or (C) twenty-five or more thereafter, and such labor organization—

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

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

Exemption

SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution.

Discrimination because of race, color, religion, sex, or national origin

SEC. 703. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Nothwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin.

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indain living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

Other unlawful employment practices

SEC. 704. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

Equal Employment Opportunity Commission

SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party, who shall be appointed by the President by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, beginning from the date of enactment of this title, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the civil service laws, such officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

(b) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(c) The Commission shall have an official seal which shall be judicially noticed.

(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(e) The Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2201–2209), is further amended—

(1) by adding to section 105 thereof (5 U.S.C. 2204) the following clause:

"(32) Chairman, Equal Employment Opportunity Commission"; and

(2) by adding to clause (45) of section 106 (a) thereof (5 U.S.C. 2205(a)) the following: "Equal Employment Opportunity Commission (4)."

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this title.

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse

to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public;

(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to advise, consult, and assist the Attorney General on such matters.

(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court.

(i) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

Prevention of unlawful employment practices

SEC. 706. (a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(c) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State, which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(d) A charge under subsection (a) shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) (except that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or the efforts of the Commission to obtain voluntary compliance.

(f) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For the purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a).

(h) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101–115), shall not apply with respect to civil actions brought under this section.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under subsection (e), the Commission may commence proceedings to compel compliance with such order.

(j) Any civil action brought under subsection (e) and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

SEC. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence,

the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

Effect on State laws

SEC. 708. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

Investigations, inspections, records, State agencies

SEC. 709 (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements and under which no person may bring a civil action under section 706 in any cases or class of cases so specified, or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

(c) Except as provided in subsection (d), every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may (1) apply to the Commission for an exemption from the application of such regulation or order, or (2) bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.

(d) The provisions of subsection (c) shall not apply to any employer, employment agency, labor organization, or joint labor-management committee with respect to matters occurring in any State or political subdivision thereof which has a fair employment practice law during any period in which such employer, employment agency, labor organization, or joint labor-management committee is subject to such law, except that the Commission may require such notations on records which such employer, employment agency, labor organization, or joint labor-management committee keeps or is required to keep as are necessary because of differences in coverage or methods of enforcement between the State or local law and the provisions of this title. Where an employer is required by Executive Order 10925, issued March 6, 1961, or by any other Executive order prescribing fair employment practices for Government contractors and subcontractors, or by rules or regulations issued thereunder, to file reports relating to his employment practices with any Federal agency or committee, and he is substantially in compliance with such requirements, the Commission shall not require him to file additional reports pursuant to subsection (c) of this section.

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

Investigatory powers

SEC. 710. (a) For the purposes of any investigation of a charge filed under the authority contained in section 706, the Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation.

(b) If the respondent named in a charge filed under section 706 fails or refuses to comply with a demand of the Commission for permission to examine or to copy evidence in conformity with the provisions of section 709(a), or if any person required to comply with the provisions of section 709 (c) or (d) fails or refuses to do so, or if any person fails or refuses to comply with a demand by the Commission to give testimony under oath, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply with the provisions of section 709 (c) or (d) or to comply with the demand of the Commission, but the attendance of a witness may not be required outside the State where he is found, resides, or transacts business and the production of evidence may not be required outside the State where such evidence is kept.

(c) Within twenty days after the service upon any person charged under section 706 of a demand by the Commission for the production of documentary evidence or for permission to examine or to copy evidence in conformity with the provisions of section 709(a), such person may file in the district court of the United States for the judicial district in which he resides, is found, or transacts business, and serve upon the Commission a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this title or with the limitations generally applicable to compulsory process or upon any constitutional or other legal right or privilege of such person. No objection which is not raised by such a petition may be urged in the defense to a proceeding initiated by the Commission under subsection (b) for enforcement of such a demand unless such proceeding is commenced by the Commission prior to the expiration of the twenty-day period, or unless the court determines that the defendant could not reasonably have been aware of the availability of such ground of objection.

(d) In any proceeding brought by the Commission under subsection (b), except as provided in subsection (c) of this section, the defendant may petition the court for an order modifying or setting aside the demand of the Commission.

Notices to be posted

SEC. 711. (a) Every employer, employment agency and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

Veterans' preference

SEC. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

Rules and regulations

SEC. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the Commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

Forcibly resisting the Commission or its representatives

SEC. 714. The provisions of section 111, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties.

Special study by Secretary of Labor

SEC. 715. The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1965, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable.

Effective date

SEC. 716. (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title.

TITLE VIII—REGISTRATION AND VOTING STATISTICS

SEC. 801. The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, include a count of persons of voting age by race, color, and national origin, and determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which the Members of the United States House of Representatives are nominated or elected, since January 1, 1960. Such information shall also be collected and compiled in connection with the Nineteenth Decennial Census, and at such other times as the Congress may prescribe. The provisions of section 9 and chapter 7 of title 13, United States Code, shall apply to any survey, collection, or compilation of registration and voting statistics carried out under this title: *Provided, however,* That no person shall be compelled to disclose his race, color, national origin, political party affiliation, how he voted, or the reasons therefor, nor shall any penalty be imposed for his failure or refusal to make such disclosure. Every person interrogated orally, by written survey or questionnaire or by any other means with respect to such information shall be fully advised with respect to his right to fail or refuse to furnish such information.

TITLE IX—INTERVENTION AND PROCEDURE AFTER REMOVAL IN CIVIL RIGHTS CASES

SEC. 901. Title 28 of the United States Code, section 1447(d), is amended to read as follows:

"An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."

SEC. 902. Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, or national origin, the Attorney General for or in the name of the United States may intervene in such action, if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

TITLE X—ESTABLISHMENT OF COMMUNITY RELATIONS SERVICE

SEC. 1001. (a) There is hereby established in the Department of Commerce a Community Relations Service (hereinafter referred to as the "Service"), which shall be headed by a Director who shall be appointed by the President with the advice and consent of the Senate for a term of four years. The Director is authorized to appoint, subject to the civil service laws and regulations, such other personnel as may be necessary to enable the Service to carry out its functions and duties, and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Director is further authorized to procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55(a)), but at rates for individuals not in excess of $75 per diem.

(b) Section 106(a) of the Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2205(a)), is further amended by adding the following clause thereto:

"(52) Director, Community Relations Service."

SEC. 1002. It shall be the function of the Service to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce. The Service may offer its services in cases of such disputes, disagreements, or difficulties whenever, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby, and it may offer its services either upon its own motion or upon the request of an appropriate State or local official or other interested person.

SEC. 1003. (a) The Service shall, whenever possible, in performing its functions, seek and utilize the cooperation of appropriate State or local, public, or private agencies.

(b) The activities of all officers and employees of the Service in providing conciliation assistance shall be conducted in confidence and without publicity, and the Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held. No officer or employee of the Service shall engage in the performance of investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he acted on behalf of the Service. Any officer or other employee of the Service, who shall make public in any manner whatever any information in violation of this subsection, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than one year.

SEC. 1004. Subject to the provisions of sections 205 and 1003(b), the Director shall, on or before January 31 of each year, submit to the Congress a report of the activities of the Service during the preceding fiscal year.

TITLE XI—MISCELLANEOUS

SEC. 1101. In any proceeding for criminal contempt arising under title II, III, IV, V, VI, or VII of this Act, the accused, upon demand therefor, shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than $1,000 or imprisoned for more than six months.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to writs, orders, or process of the court.

Nor shall anything herein 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.

SEC. 1102. Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

SEC. 1103. Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision

is inconsistent with any of the purposes of this Act, or any provision thereof.

SEC. 1104. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 1105. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

AMENDMENT NO. 1053

Mr. COOPER. Mr. President, I submit an amendment to the amendment in the nature of a substitute (No. 656) submitted by the Senator from Illinois [Mr. DIRKSEN], for himself and other Senators, to H.R. 7152, and ask that it be printed, considered as having been read, and lie on the table.

The ACTING PRESIDENT pro tempore. Without objection, the request of the Senator is agreed to; and the amendment will be received, considered as having been read, printed, and lie on the desk.

The amendment (No. 1053) is as follows:

On page 3, beginning with line 10, strike out all through line 18, and insert in lieu thereof the following: "That the Attorney General may enter into agreements with appropriate State or local authorities as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped."

Mr. DIRKSEN. Mr. President, it is a year ago this month that the late President Kennedy sent his civil rights bill and message to the Congress. For 2 years, we had been chiding him about failure to act in this field. At long last, and after many conferences, it became a reality.

After 9 days of hearings before the Senate Judiciary Committee, it was referred to a subcommittee. There it languished and the administration leadership finally decided to await the House bill.

In the House it traveled an equally tortuous road. But at long last, it reached the House floor for action. It was debated for 64 hours; 155 amendments were offered; 34 were approved. On February 10, 1964, it passed the House by a vote of 290 to 130. That was a 65-percent vote.

It was messaged to the Senate on February 17 and reached the Senate Calendar on February 26. The motion to take up and consider was made on March 9. That motion was debated for 16 days and on March 26 by a vote of 67 to 17 it was adopted.

It is now 4 months since it passed the House. It is 3½ months since it came to the Senate Calendar. Three months have gone by since the motion to consider was made. We have acted on one intervening motion to send the bill back to the Judiciary Committee and a vote on the jury trial amendment. That has been the extent of our action.

Sharp opinions have developed. Incredible allegations have been made. Extreme views have been asserted. The mail volume has been heavy. The bill has provoked many long-distance telephone calls, many of them late at night or in the small hours of the morning. There has been unrestrained criticism about motives. Thousands of people have come to the Capitol to urge immediate action on an unchanged House bill.

For myself, I have had but one purpose and that was the enactment of a good, workable, equitable, practical bill having due regard for the progress made in the civil rights field at the State and local level.

I am no Johnnie-come-lately in this field. Thirty years ago, in the House of Representatives, I voted on antipoll tax and antilynching measures. Since then, I have sponsored or cosponsored scores of bills dealing with civil rights.

At the outset, I contended that the House bill was imperfect and deficient. That fact is now quite generally conceded. But the debate continued. The number of amendments submitted increased. They now number nearly 400. The stalemate continued. A backlog of work piled up. Committees could not function normally. It was an unhappy situation and it was becoming a bit intolerable.

It became increasingly evident that to secure passage of a bill in the Senate would require cloture and a limitation on debate. Senate aversion to cloture is traditional. Only once in 35 years has cloture been voted. But the procedure for cloture is a standing rule of the Senate. It grew out of a filibuster against the armed ship bill in 1917 and has been part of the Standing Rules of the Senate for 47 years. To argue that cloture is unwarranted or unjustified is to assert that in 1917, the Senate adopted a rule which it did not intend to use when circumstances required or that it was placed in the rulebook only as to be repudiated. It was adopted as an instrument for action when all other efforts failed.

Today the Senate is stalemated in its efforts to enact a civil rights bill, one version of which has already been approved by the House by a vote of more than 2 to 1. That the Senate wishes to act on a civil rights bill can be divined from the fact that the motion to take up was adopted by a vote of 67 to 17.

There are many reasons why cloture should be invoked and a good civil rights measure enacted.

First. It is said that on the night he died, Victor Hugo wrote in his diary, substantially this sentiment:

Stronger than all the armies is an idea whose time has come.

The time has come for equality of opportunity in sharing in government, in education, and in employment. It will not be stayed or denied. It is here.

The problem began when the Constitution makers permitted the importation of persons to continue for another 20 years. That problem was to generate the fury of civil strife 75 years later. Out of it was to come the 13th amendment ending servitude, the 14th amendment to provide equal protection of the laws and dual citizenship, the 15th amendment to prohibit government from abridging the right to vote.

Other factors had an impact. Two and three-quarter million young Negroes served in World Wars I, II, and Korea. Some won the Congressional Medal of Honor and the Distinguished Service Cross. Today they are fathers and grandfathers. They brought back impressions from countries where no discrimination existed. These impressions have been transmitted to children and grandchildren. Meanwhile, hundreds of thousands of colored have become teachers and professors, doctors and dentists, engineers and architects, artists and actors, musicians and technicians. They have become status minded. They have sensed inequality. They are prepared to make the issue. They feel that the time has come for the idea of equal opportunity. To enact the pending measure by invoking cloture is imperative.

Second. Years ago, a professor who thought he had developed an uncontrovertible scientific premise submitted it to his faculty associates. Quickly they picked it apart. In agony he cried out, "Is nothing eternal?" To this one of his associates replied, "Nothing is eternal except change."

Since the act of 1875 on public accommodations and the Supreme Court decision of 1883 which struck it down, America has changed. The population then was 45 million. Today it is 190 million. In the Pledge of Allegiance to the Flag we intone, "One Nation, under God." And so it is. It is an integrated Nation. Air, rail, and highway transportation make it so. A common language makes it so. A tax pattern which applies equally to white and nonwhite makes it so. Literacy makes it so. The mobility provided by 80 million autos makes it so. The accommodations laws in 34 States and the District of Columbia makes it so. The fair employment practice laws in 30 States make it so. Yes, our land has changed since the Supreme Court decision of 1883.

As Lincoln once observed:

The occasion is piled high with difficulty and we must rise with the occasion. As our case is new, so we must think anew and act anew. We must first disenthrall ourselves and then we shall save the Union.

To my friends from the South, I would refresh you on the words of a great Georgian named Henry W. Grady. On December 22, 1886, he was asked to respond to a toast to the new South at the New England society dinner. His words were dramatic and explosive. He began his toast by saying:

There was a South of slavery and secession—that South is dead. There is a South of union and freedom—that South thank God is living, breathing, growing every hour.

America grows. America changes. And on the civil rights issue we must rise with the occasion. That calls for cloture and for the enactment of a civil rights bill.

Third. There is another reason—our covenant with the people. For many years, each political party has given major consideration to a civil rights plank in its platform. Go back and reexamine our pledges to the country as we sought the suffrage of the people and for a grant of authority to manage and direct their affairs. Were these

pledges so much campaign stuff or did we mean it? Were these promises on civil rights but idle words for vote-getting purposes or were they a covenant meant to be kept? If all this was mere pretense, let us confess the sin of hypocrisy now and vow not to delude the people again.

To you, my Republican colleagues, let me refresh you on the words of a great American. His name is Herbert Hoover. In his day he was reviled and maligned. He was castigated and calumniated. But today his views and his judgment stand vindicated at the bar of history. In 1952 he received a volcanic welcome as he appeared before our national convention in Chicago. On that occasion he commented on the Whig Party, predecessor of the Republican Party, and said:

> The Whig Party temporized, compromised upon the issue of freedom for the Negro. That party disappeared. It deserved to disappear. Shall the Republican Party receive or deserve any better fate if it compromises upon the issue of freedom for all men?

To those who have charged me with doing a disservice to my party because of my interest in the enactment of a good civil rights bill—and there have been a good many who have made that charge—I can only say that our party found its faith in the Declaration of Independence in which a great Democrat, Jefferson by name, wrote the flaming words:

> We hold these truths to be self-evident that all men are created equal.

That has been the living faith of our party. Do we forsake this article of faith, now that equality's time has come or do we stand up for it and insure the survival of our party and its ultimate victory. There is no substitute for a basic and righteous idea. We have a duty—a firm duty—to use the instruments at hand—namely, the cloture rule—to bring about the enactment of a good civil rights bill.

Fourth. There is another reason why we dare not temporize with the issue which is before us. It is essentially moral in character. It must be resolved It will not go away. Its time has come. Nor is it the first time in our history that an issue with moral connotations and implications has swept away the resistance, the fulminations, the legalistic speeches, the ardent but dubious arguments, the lamentations and the thought patterns of an earlier generation and pushed forward to fruition.

More than 60 years ago came the first efforts to secure Federal pure food and drug legislation. The speeches made on this floor against this intrusion of Federal power sound fantastically incredible today. But it would not be stayed. Its time had come and since its enactment, it has been expanded and strengthened in nearly every Congress.

When the first efforts were made to ban the shipment of goods in interstate commerce made with child labor, it was regarded as quite absurd. But all the trenchant editorials, the bitter speeches, the noisy onslaughts were swept aside as this limitation on the shipment of goods made with sweated child labor moved on to fulfillment. Its time had come.

More than 80 years ago came the first efforts to establish a civil service and merit system to cover Federal employees. The proposal was ridiculed and drenched with sarcasm. Some of the sharpest attacks on the proposal were made on this very Senate floor. But the bullet fired by a disappointed office seeker in 1880 which took President Garfield's life was the instrument of destiny which placed the Pendleton Act on the Federal statute books in 1883. It was an idea whose time had come.

When the New York Legislature placed a limit of 10 hours per day and 6 days per week upon the bakery workers in that State, this act was struck down by the U.S. Supreme Court. But in due time came the 8-hour day and the 40-hour week and how broadly accepted this concept is today. Its time had come.

More than 60 years ago, the elder La Follette thundered against the election of U.S. Senators by the State legislatures. The cry was to get back to the people and to first principles. On this Senate floor, Senators sneered at his efforts and even left the Chamber to show their contempt. But 50 years ago, the Constitution was amended to provide for the direct election of Senators. Its time had come.

Ninety-five years ago came the first endeavor to remove the limitation on sex in the exercise of the franchise. The comments made in those early days sound unbelievably ludicrous. But on and on went the effort and became the 19th amendment to the Constitution. Its time had come.

When the eminent Joseph Choate appeared before the Supreme Court to assert that a Federal income tax statute was unconstitutional and communistic, the Court struck down the work of Congress. Just 20 years later in 1913 the power of Congress to lay and collect taxes on incomes became the 16th amendment to the Constitution itself.

These are but some of the things touching closely the affairs of the people which were met with stout resistance, with shrill and strident cries of radicalism, with strained legalisms, with anguished entreaties that the foundations of the Republic were being rocked. But an inexorable moral force which operates in the domain of human affairs swept these efforts aside and today they are accepted as parts of the social, economic and political fabric of America.

Pending before us is another moral issue. Basically it deals with equality of opportunity in exercising the franchise, in securing an education, in making a livelihood, in enjoying the mantle of protection of the law. It has been a long, hard furrow and each generation must plow its share. Progress was made in 1957 and 1960. But the furrow does not end there. It requires the implementation provided by the substitute measure which is before us. And to secure that implementation requires cloture.

Let me add one thought to these observations. Today is an anniversary. It is in fact the 100th anniversary of the nomination of Abraham Lincoln for a second term for the Presidency on the Republican ticket. Two documents became the blueprints for his life and his conduct. The first was the Declaration of Independence which proclaimed the doctrine that all men are created equal. The second was the Constitution, the preamble to which began with the words:

> We, the people * * * do ordain and establish this Constitution for the United States of America.

These were the articles of his superb and unquenchable faith. Nowhere and at no time did he more nobly reaffirm that faith than at Gettysburg 101 years ago when he spoke of "a new nation, conceived in liberty and dedicated to the proposition that all men are created equal."

It is to take us further down that road that a bill is pending before us. We have a duty to get that job done. To do it will require cloture and a limitation on debate as provided by a standing rule of the Senate which has been in being for nearly 50 years. I trust we shall not fail in that duty.

That, from a great Republican, thinking in the frame of equality of opportunity—and that is all that is involved in this bill.

To those who have charged me with doing a disservice to my party—and there have been many—I can only say that our party found its faith in the Declaration of Independence, which was penned by a great Democrat, Thomas Jefferson by name. There he wrote the great words:

> We hold these truths to be self-evident, that all men are created equal.

That has been the living faith of our party. Do we forsake this article of faith, now that the time for our decision has come?

There is no substitute for a basic ideal. We have a firm duty to use the instrument at hand; namely, the cloture rule, to bring about the enactment of a good civil rights bill.

I appeal to all Senators. We are confronted with a moral issue. Today let us not be found wanting in whatever it takes by way of moral and spiritual substance to face up to the issue and to vote cloture.

Mr. TOWER subsequently said: Mr. President, I ask unanimous consent that remarks I have prepared on cloture, which include two speeches made by former Senator Lyndon Johnson, be printed in the RECORD prior to the vote earlier today on cloture.

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

STATEMENT BY SENATOR TOWER

Proponents of the civil rights bill have advised opponents for some months now that the pending legislation has as its objective the protection of certain minorities. Proponents have expounded upon the principle that the rights of the minority should be protected. Yet they, by petitioning for cloture, seek the destruction of the minority rights of others.

I think it is well to point out that a Senate majority cannot be said to always represent a consensus of the people of this country, or a consensus of opinion of the majority of the

States. In many cases, popular opinion upon a certain question or issue may not be formulated until a considerable amount of time has elapsed. The continued debate here may well prevent action not in conformity with the true consensus of opinion in this country.

The Senate of the United States has a special duty to give detailed study to proposed legislation. We have just seen what can happen when legislation is railroaded through the House of Representatives with minimal consideration.

I think that most proponents of the civil rights bill will agree that the House version of the civil rights bill was not given proper or sufficient analysis. It may be that other issues, improperly drafted, will be railroaded through the House in a like manner.

The last place to correct such legislation is this body, the Senate of the United States. I feel it is essential, Mr. President, that the right of unlimited debate should always prevail in at least one of our governmental bodies.

It has often been said that the right of unlimited debate has never prevented needed legislation from being subsequently enacted into law, that no really meritorious measure has been permanently defeated. I think history has proven this true.

I think it can be fairly said that the Senate has the unique function, the responsibility, of acting as a check upon the executive branch of our Government. This responsibility can only be fully performed with the continuation of the right of unlimited debate.

It is essential to the continuation of our governmental system of separation of powers.

The right of unlimited debate is justifiable whenever great, vital, fundamental, constitutional questions are being considered, questions like we have in the pending legislation.

In my perusal of Senate consideration of cloture in years past, I came across a number of excellent speeches on the right of unlimited debate. I wish to call to the particular attention of my colleagues one such speech made in March 1949, and it will be inserted in its entirety in the RECORD. In addition, I will quote some of its highlights and comment briefly upon them.

The principles embodied in this 1949 speech are as valid today as then, perhaps more so. These principles, in my opinion, will be valid as long as America remains a free nation.

I quote from the 1949 speech:

"It matters not, Mr. President, whether cloture permits Senators to speak 1 hour, 1 week, or 1 month. If this resolution is adopted, the bridle will be upon the tongues of all minorities, and no mount is free, once the bit is in its mouth."

Proponents have advised us for some days now that the basic purpose of the civil rights legislation is the protection of the minority. On the contrary, I am of the opinion, as well as the quoted speaker, that the right of unlimited debate in the U.S. Senate is one of the very best protections that the minority can have.

Quoting further from the speech:

"Mr. President, I realize that we of the South who speak here are accused of prejudice, that we are labeled in the folklore of American tradition as a prejudiced minority. I would point out, though, that prejudice is not a minority affliction: prejudice is most wicked and most harmful as a majority ailment, directed against minority groups. Prejudice inflames, excites, exaggerates; prejudice, I think, has inflamed a majority outside the Senate against those of us who speak now, exaggerating the evil and intent of the filibuster. Until we are free of prejudice, then there will be a place in our system for the filibuster—for the filibuster is the last defense of reason, the sole defense of minorities who might be victimized by prejudice.

"When we speak of minorities, though, we are answered with the argument that the will of the majority should prevail, and that it is in the American tradition that the majority should prevail. This is a commonplace fallacy. It is akin to the doctrine that 'a king can do no wrong.'

"In this country, a majority may govern, but it does not rule. The genius of our constitutional and representative government is the multitude of safeguards provided to protect minority interests. On the legislative level, where the laws are written, the House of Representatives was so designed by the architects of our Constitution that virtually every valid sectional or local interest would, at least, have a guardian here to scrutinize each law which might be enacted. But those guardians, in most instances, have little time and few opportunities to give voice to their thoughts on the floor for the benefit of their own constituents, their colleagues, or the people of this country.

"The citadel of this carefully planned protection of minority rights is the Senate. Here, Members must be somewhat older in years than in the House, their terms of office are longer, and the change in membership is deliberately less abrupt. As the House is designed to provide a reflection of the mood of the moment, the Senate is meant to reflect the continuity of the past—to preserve the delicate balance of justice between the majority's whims and the minority's rights."

Another quote from the 1949 speech proved profound indeed only a short time ago, in 1962, during Senate consideration of the communications satellite legislation:

"When I say minority, I do not limit the term to mean only the South. A peculiar and passing interlude in history has vested the defense of the filibuster in the South, but only temporarily. The filibuster is not a southern creation; it belongs to all the Nation, and to all the minorities—racial, religious, political, economic, or otherwise—which make up this Nation. I can foresee unlimited situations in which some of the minority groups, which have for 10 years agitated so earnestly for the filibuster's abolition, would want, and would use if they could, the filibuster to defend their rights."

Let us not curtail the carefully planned protection of minority rights. The right of unlimited debate is a right for all.

The 1949 speech by one of our former colleagues considered also the importance to the smaller state of the right of unlimited debate, point out that the Senate was established as a body of equals, with each State receiving equal representation, emphasizing the fallacy of the majority rule concept in its application to Senate procedure.

Quoting again from the 1949 speech:

"Here was a forum in which minorities—minorities of population or minorities of ideas—could stand on equal footing with the most overpowering majority."

The March 9, 1949, speech, referring to majorities as accidents of timing, warned of mass produced majorities and the trend toward the demanding by such majorities of changes on less evidence and less thought.

Quoting from the speech:

"In the face of this obvious trend, it seems almost criminal to me for us to spend our time whittling away at the few remaining safeguards against unchecked and uncontrolled majority rule. These majorities, before which we are asked to bend our knee in submission, may not always be what they seem. Mass-produced majorities are quite likely to encourage mass-produced laws.

"Somewhere in our legislative system, Mr. President, there must be preserved a forum where representatives of a minority, equipped with little more than their convictions and their voices, can stand in dignity and plead their case, unhurried and unhampered."

I turn now to a particularly pertinent quotation from the 1949 speech wherein the importance of the right of unlimited debate in the Senate and its relationship to the separation of Presidential and congressional powers is given serious consideration:

"The distinguished junior Senator from Arkansas [Mr. FULBRIGHT] pointed out very effectively that it is characteristic of strong Executives to become impatient with any obstruction which thwarts their exercise of power. Political parties suffer some of the same characteristics. If, though, we change the rules here to oblige the Executive and oblige victorious parties, we may make those Executives and those parties stronger, but we most certainly shall not be making our Government stronger. We shall, instead, be taking away from the strength of the Government. We shall be opening the way to rule by political leaders and closing the door on government by responsible and duly elected officials.

"That brings us to another consideration I should like to review, without thought of personalities, present or past.

"I sincerely believe that the right of unlimited debate in the Senate is an essential safeguard against potential total supremacy of the executive branch.

"A man elevated to the office of the Presidency has virtually unlimited powers of influence over his countrymen. His own personality is a force of great impact upon all the people of the Nation and, in fact, upon the people of the world. Add to those powers directly his all those less-conspicuous powers of his aides, his administrative agencies, and the multitude of channels which feel his influence, and you have a force no other representative government has ever entrusted for long to one man.

"If on occasion you grant to this titular head of government the further intoxicant of an overwhelming majority of loyal supporters in the legislative branch, then, Mr. President, you have a force well-nigh irresistible. The distinctions between executive and legislative are difficult to preserve under such circumstances; mere memorandums become laws, and laws become mere memorandums.

"In such a situation, which, happily, is more hypothetical than historical, the entire theory of our governmental system of checks and balances dissolves and evaporates. There is no one to check and no one to balance, unless and except the remaining minority has the prospect of holding each decision up to lengthy and thorough inspection here on the Senate floor."

This statement is a strong one—it is made even stronger because he who spoke those words of wisdom is now the President of the United States.

Senator Johnson expressed his alarm at the emphasis on standardization and regimentation of public thought, which he apparently felt was largely responsible for the attack on the right of unlimited debate. He said:

"Lasting answers evolve from conflict and compromise. A gag rule is the trademark of temporary solutions arrived at by lazy minds. Yet the whole trend of our modern-day thinking, as exemplified in this cloture resolution, is toward a gag rule and glorification of an unchallenged majority.

"We—and I am speaking of all the Nation—read the same news, hear the same opinions on the radio, see the same personalities on the screen, and arrive, at approximately the same time, at the same conclusions. We think we have been thinking and congratulate ourselves on having thought alike, when actually we have not thought at all.

"To me, all this is disturbing.

"I am distressed by the regimentation, conscious or not, of our opinions, so that if we once make the wrong assumption and proceed on that judgment, we will plunge headlong to disaster with no one to warn

us. But, Mr. President, I am more than distressed, I am genuinely alarmed, when this emphasis on standardization, and regimentation, if you please, paralyzes the judgment of a legislative body which was created to give sanctuary to disagreements.

"If we fall prey to this trend here in the Senate, then the legislative branch of Government will surrender its most effective guarantee of a check on itself and a balance against the executive branch. For unlimited debate is a check on rash action within the legislative channels and a balance against abuses in the executive branch. Furthermore, we will be surrendering this guarantee at a time in our history when all evidence indicates a greater need to preserve and encourage the right to criticize and challenge mass opinion."

Next, speaking of the Senate as a national forum, Senator Johnson said:

"So, Mr. President, it is my conviction that the right of unlimited debate here in the Senate is an essential safeguard in our American system of representative government; first, as a safeguard for the public's right to full information on all legislative decisions; second, as a safeguard against the deliberate or accidental destruction of the distinctions between the legislative and other branches of Government; third, as a safeguard for Members here—both majority and minority—against rash, impetuous action, or action predicated on incomplete or inaccurate information."

Turning to civil rights as a fundamental issue, Senator Johnson said:

"This civil rights question brings into play all those strong and evil forces of racial prejudice. Perhaps no prejudice is so contagious or so dangerous as the unreasoning prejudice against men because of their birth, the color of their skin, or their ancestral background. Racial prejudice is dangerous because it is a disease of the majority, endangering minority groups. [I say frankly that the Negro—as the minority group involved in this discussion of civil rights—has more to lose by the adoption of any resolution outlawing free debate in the Senate than he stands to gain by the enactment of the civil rights bills as they are now written.] Certainly these laws might give the Negro some opportunity to see those punished who interfered with his rights, but I do not believe any of these bills would actually guarantee the Negro—or any other group—that his rights would not be molested. If, perchance, the prejudice against the Negro of which we in the South are accused should spread across the Nation, fanned by inflammatory incident of only passing consequence, the Negro would have no recourse to halt enactment of vicious legislation here or elsewhere if this right of unlimited debate did not exist in the Senate."

I know well of what Senator Johnson spoke. I am of the opinion that too many have felt the civil rights bill should be passed because it has laudable objectives, without realizing its enactment might in fact be destructive of the attainment of such objectives, and thus make it even more difficult to permanently resolve racial problems.

In closing, Senator Johnson referred to the historical development of our Nation. Of the Senate's role in this development, he said:

"Read the history of our Nation, the history of American democracy, and I think it seems clearly evident that few things have contributed more to our solidarity, to our emerging maturity, or to our stature as citizens of the world than the debates conducted here in the Senate Chamber. Debate here has been, perhaps, the sturdiest fiber of our design for more representative government."

Although Senator Johnson brought forth a number of excellent reasons why cloture should not be invoked, he saved the best for the last. Undoubtedly, the most important of all was embodied in his closing paragraphs, as follows:

"Mr. President, if I were given a choice, if I should have the opportunity to send into the countries behind the Iron Curtain one freedom and only one, I know what my choice would be. I would send to those lands the very freedom we are attempting to disown here in the Senate. I would send to those nations the right of unlimited debate in their legislative chambers. It would go as merely a seed, but the harvest would be bountiful; for by planting in their system this bit of freedom we would see all freedoms grow, as they have never grown before on the soils of Eastern Europe.

"This freedom we debate, Mr. President, is fundamental and indispensable. It stands as the fountainhead of all our freedoms. If we now, in haste and irritation, shut off this freedom, we shall be cutting off the most vital safeguard which minorities possess against the tyranny of momentary majorities. I do not want my name listed as one of those who took this freedom away from the world when the world most needed it."

Since 1949, we have seen much of the free world fall under Communist influence. The freedom of unlimited debate, as President Johnson said, is "fundamental and indispensable." Let us now be even more careful in safeguarding one of our most cherished freedoms.

Speech of Hon. Lyndon B. Johnson When a Member of the Senate

Mr. President, I rise with some reluctance to speak against the motion now before the Senate.

I have been a Member of the Senate only 2 months. On both sides of the aisle sit men with experience here far exceeding my own who believe sincerely that this resolution is worthy and essential and should be adopted.

I respect their sincerity, and I do not weigh their judgment lightly.

In this debate, however, we are asked to choose between the freedom to enact laws hastily and the freedom to speak. For me, this is no choice. I cannot embrace any freedom which demands, as the terms for its existence, the imprisonment of another and more precious freedom.

CLOTURE NO HANDICAP TO ME

I am aware that the proponents of this resolution deny that their form of cloture would impede free speech. They only intend to prevent filibusters by limiting each Senator—if two-thirds of the Members desire to do so—to 1 hour on the floor to speak for or against a piece of legislation. Personally, that would rarely be a handicap or an affront to me. I can imagine few occasions—even now—when I would desire more than an hour of the Senate's time to present my views on most issues arising here.

But I would not knowingly imperil a moment of my freedom to speak. So, I refuse now to seek an authority over others which I would not yield myself.

It matters not, Mr. President, whether cloture permits Senators to speak 1 hour, 1 week, or 1 month. If this resolution is adopted, the bridle will be upon the tongues of all minorities, and no mount is free, once the bit is in its mouth.

There is no such thing as a "reasonable limit" on free speech. Good intentions, gentle reforms, and reasonable limits have destroyed more freedoms than evil forces could ever do, and I fear that danger now. As a distinguished Senator from Missouri, Senator Reed, once said: "Cloture means the granting of a power. Whenever you grant a power, you must assume that the power will be exercised. So when we discuss this proposed rule, we must do so in the light not of how it may be exercised so as to do no harm, but we must consider how it may be exercised to do harm."

Cloture is to the majority what filibuster is to the minority. Each is a device by which a group may try to achieve its goal in legislative deliberations. But the devices are not equals.

CLOTURE—THE DEADLIEST WEAPON

A filibuster, at best, has no assurance of success; it is more prayer than promise, a last hope for a conscientious minority. Not so, cloture. It is perhaps, the deadliest weapon in the arsenal of parliamentary procedures. Once a majority is armed with that weapon, the majority can be—if it so chooses—beyond the laws and moral compulsion of such flimsy restraints as parliamentary courtesy and precedents.

Against this, a minority has no defense.

When I say minority, I do not limit the term to mean only the South. A peculiar and passing interlude in history has vested the defense of the filibuster in the South, but only temporarily. The filibuster is not a Southern creation; it belongs to all the Nation, and to all the minorities—racial, religious, political, economic, or otherwise—which make up this Nation. I can foresee unlimited situations in which some of the minority groups, which have for 10 years agitated so earnestly for the filibuster's abolition, would want, and would use if they could, the filibuster to defend their rights.

Mr. President, I realize that we of the South who speak here are accused of prejudice, that we are labeled in the folklore of American tradition as a prejudiced minority. I would point out, though, that prejudice is not a minority affliction; prejudice is most wicked and most harmful as a majority ailment, directed against minority groups. Prejudice inflames, excites, exaggerates; prejudice, I think, has inflamed a majority outside the Senate against those of us who speak now, exaggerating the evil and intent of the filibuster. Until we are free of prejudice, then there will be a place in our system for the filibuster—for the filibuster is the last defense of reason, the sole defense of minorities who might be victimized by prejudice.

A KING CAN DO NO WRONG

When we speak of minorities, though, we are answered with the argument that the will of the majority should prevail, and that it is in the American tradition that the majority should prevail. This is a commonplace fallacy. It is akin to the doctrine that "a king can do no wrong."

In this country, a majority may govern, but it does not rule. The genius of our constitutional and representative government is the multitude of safeguards provided to protect minority interests. On the legislative level, where the laws are written, the House of Representatives was so designed by the architects of our Constitution that virtually every valid sectional or local interest would, at least, have a guardian here to scrutinize each law which might be enacted. But those guardians, in most instances, have little time and few opportunities to give voice to their thoughts on the floor for the benefit of their own constituents, their colleagues, or the people of this country.

The citadel of this carefully planned protection of minority rights is the Senate. Here, Members must be somewhat older in years than in the House, their terms of office are longer, and the change in membership is deliberately less abrupt. As the House is designed to provide a reflection of the mood of the moment, the Senate is meant to reflect the continuity of the past—to preserve the delicate balance of justice between the majority's whims and the minority's rights.

SENATE IS A BODY OF EQUALS

When we speak of majorities in the Senate—based solely on the numerical division of the Members—we speak in hollow terms. The Senate was conceived as a body of equals, with each of the States in the Union equally represented. Majority rule obviously did not underlie this concept. Here was a forum in which minorities—minorities of population or minorities of ideas—could stand on equal footing with the most overpowering majority.

Under this system, the 15 million people of New York have no more votes in the Senate than the 110,000 people in Nevada. Does that imply any intent for the majority to reign supreme here? Certainly not; the implication is clearly contrary to the principle of the resolution sought to be brought before us. It would be folly to yield to New York the power to shut off the voice of Nevada; it would be a greater travesty upon justice to permit Nevada to invoke cloture against New York.

Let us look further at this theory of majority rule and the futility of its application to the Senate's procedures:

As has already been made plain by my colleagues on the Senate floor and in committee hearings, the 14 New England, Middle Atlantic, and East North Central States, with a population equivalent to 47.7 percent of the population of the United States, has less than 30 percent of the votes in the Senate of the United States. Under the present rules of the Senate requiring a two-thirds vote to effect cloture, all of the Senators from this group of States could not prevent cloture.

If Texas and California were added to this list, we would have a majority of all of the population of the United States represented in this Senate by only one-third of the Members of this body.

Let me name those States: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Texas, and California. Now, Mr. President, if, under the rules of the Senate, cloture should be invoked against the Senators from those States, it is clear that the will of the majority of the people of this country would most certainly be thwarted.

That would mean that the will of the majority of the Senators had prevailed, but it would not by any device of logic or argument mean that the will of the majority of the American public had prevailed.

IN TERMS OF INCOME

Mr. President, I dislike to talk of freedom in terms of income, in terms of money, but in passing I cannot refrain from pointing out that measured by the latest percentages of collections of internal revenue, the 14 States, mentioned above, exclusive of Texas and California, contributed 60.9 percent of the total income received by the Federal Government during the fiscal year ending June 30, 1948.

If the shoe were on the other foot, and if a revenue or appropriation measure were involved, I feel that the Senators from New York, Ohio, Illinois, Indiana, and the other States mentioned, would not and should not hesitate to say that since their constituents contributed a majority of the revenue and a majority of the population they should have the right to exercise their freedom of speech to prevent the passage of legislation ruinous to their people.

When we speak of majorities, Mr. President, let us not be blinded by our own estimate of our status. Let us not overemphasize our personal convenience or our personal convictions; and, particularly, let us not be guided by personal estimates of our colleagues. We may each in our private conscience find faults and shortcomings in the ability, as well as the reasoning, of some of our colleagues here. Mr. President, it is a great temptation to yearn for the power to shut off an irritating voice, particularly when that voice is being used against you.

MAJORITY IS SOMETIMES WRONG

But the fact that a voice of the minority is irritating or repetitious or even sometimes presumptuous does not indict that voice as being wrong and in error. The majority is ofttimes irritating, repetitious, and presumptuous, and the majority is sometimes wrong.

If either the majority or minority assumes that all arguments have been heard, all evidence presented, all original thoughts revealed, then that group is making an assumption which our human fallibility does not permit. Mr. President, it takes great wisdom for a man to know when he himself has said enough, and I pray for that good sense myself. But, I say to you, Mr. President, only wisdom akin to divine judgment can tell us when our fellow man has said all he should say.

The late Senator Joseph Robinson, of Arkansas, once said in this Chamber: "I am willing to vindicate this forum of open debate where fools may be arrogant, but where men who have studied problems still have a chance to speak."

Some may, most certainly, be arrogant here. Others may shame the name of the Senate. Willful men may be abusive. But when, in irritation, you withdraw freedom from the few who abuse it, you withdraw it from the wise and learned men, too.

If you subtract from the freedom of one region and of those who represent that region, you subtract from the freedom of all regions and all representatives. Freedom, gentlemen, does not oblige the formulas of mathematics. You cannot subtract a quantity here and add it elsewhere. True, it may be divided, but only in equals, not in fractions. There can be no two-thirds freedom or three-fourths freedom or 99.9 percent freedom; and no majority is so powerful, so righteous, so benevolent that it can change this simple reality.

MAJORITIES ARE NOT PERMANENT

Majority is, after all, Mr. President, a treacherous word. Majorities are not fixed, they are not permanent. The majority which today seems secure may vanish tomorrow.

I think it is quite pertinent to this discussion to examine the creation of majorities, how they are built and who builds them in American life today. Majorities, after all, do not simply materialize of their own accord without leadership and encouragement.

Majorities are the creation of communications. People form their judgments and mold their thinking by what they read, by what they see, by what they hear—and, perhaps, sometimes, or ofttimes, by what they smell. In this country, as in no other country in world history, our people have the opportunity to read more, see more, and hear more about public issues.

As our system of communications is improved and advanced by the discoveries of science, information is imparted with greater speeds. The report of what is going on—or, to be more exact, what seems to be going on—rushes direct from the point of origin to all Americans simultaneously. By radio, telegraph, telephone, and television, the information—or what one or two men in a particular agency may consider information—speeds out over the Nation and is received by individuals without a great deal of editing or much intentional commentary.

CITIZENS ARE BELIEVING SAME THING

The result of this is sobering, because, more and more, all our citizens are hearing the same thing, seeing the same thing, reading the same thing, and believing the same thing.

Furthermore, the trend of all agencies controlling the channels of rapid communication—a trend apparently demanded by the public—is for brevity. Our wire-service correspondents, our radio newsmen, all others collecting and presenting accounts of what happens here in the Senate Chamber or elsewere, are told, "Make it brief, make it simple, but make it fast."

In such an atmosphere of speed and brevity, the word "filibuster" becomes a much more useful and meaningful expression than something such as unlimited debate or complete freedom of speech. A majority which would vigorously and devoutly defend a Senator's complete freedom of speech will, on the other hand, angrily condemn a Senator's filibuster because the word has been presented to them as an evil term, scornfully used.

That is only an illustration of a minor point, but I think it helps to emphasize the impact of rapid communications in building majority opinion.

MAJORITIES ARE ACCIDENTS OF TIMING

As the information reaching the public becomes more and more standardized, the first group to advocate and sponsor an idea here in Washington wins a tremendous advantage over their opposition. By presenting their case forcefully and persuasively and by presenting it rapidly, they have a good chance to captivate the majority of the people before any opposing group has time to marshal its forces and its evidence.

In other words, Mr. President, a majority can be and frequently is an accident of timing rather than the product of persuasion. As our communications become more rapid, almost instantaneous, we are going to see more majorities built up in a matter of days and even hours than in a period of months or years. We are going to see majorities demanding changes on less evidence and with less thought.

In the face of this obvious trend, it seems almost criminal to me for us to spend our time whittling away at the few remaining safeguards against unchecked and uncontrolled majority rule. These majorities, before which we are asked to bend our knee in submission, may not always be what they seem. Mass-produced majorities are quite likely to encourage mass-produced laws.

Somewhere in our legislative system, Mr. President, there must be preserved a forum where representatives of a minority, equipped with little more than their convictions and their voices, can stand in dignity and plead their case, unhurried and unhampered. If the pending resolution is adopted, no such forum will exist.

Oh, I know that proponents of this cloture resolution say every Senator would have ample time to present his case. I know others will point out that what a minority says here will be given equal treatment by the agencies of communication, and the public will have ample opportunity to weigh the merits of the minority's case.

That may be true, as a theory. But while we have made tremendous progress in devising methods and mechanics for getting more and more opinions and information into the minds of the public, we have not made much progress in finding devices to get opinions out of the minds of the public. Mr. President, you may convince a man that something is true with merely a word or a sentence, but if you seek to convince him that he should change his mind, then a lifetime may not be long enough to achieve that goal.

We must not, we cannot, submit to the theory that a majority is a divine and sacred thing. We must not, we cannot, ignore the forces which construct majorities. Truth must retain the privilege of open competition with information, for truth and information are not always one and the same thing.

THE 1948 CAMPAIGN PROVES FALLACY

I would call to mind the happenings of last fall, which impressed me profoundly with the weight and power of unlimited debate. I say this to my colleagues on this side of the aisle, and I say it with sincere respect. The information was abroad in the land that the Democratic Party was doomed to defeat; for most of the year, perhaps even as late as October, I am sure a majority in this country, accepted that information as correct. But there was no cloture rule on the man in the White House. There was no rule limiting him to an hour's debate because two-thirds of the Nation thought they had heard from him all they could hear, or all they wanted to hear.

Mr. Truman went out to the people. He talked to them, telling them his views again and again, repeating his arguments as often as men and women would come to listen. I rode with him on that train for a while. I saw him up before daybreak, waiting to speak to the people who gathered around the rear platform as early as 6 o'clock in the morning. I saw him still speaking far into that night. Over and over again, I heard some of his close associates say, "If only we had a few more weeks, there would be no doubt about the outcome." They knew then that because Mr. Truman had dared to keep speaking, because Mr. Truman had not bowed before the opinion of the majority 5 months before, the people were listening and were changing their minds.

If anything in our history exposes the fallacy of assumptions ventured here regarding the infallibility of temporary majorities, the Presidential campaign and election of 1948 does just that. It will not be remembered to the credit of our name if a Democratic leadership deprives the Senate and the Nation of that right now.

Mr. President, during the course of our consideration of this measure, I have been greatly impressed by an observation which the senior Senator from Alabama [Mr. HILL], made during the committee hearings. Speaking of his service in the House prior to his election to the Senate, the able Senator recalled that he often heard the appeal as a Representative: "We must go along with the party, because party government is the way of the House of Representatives."

And the Senator from Alabama added: "I am pleading here today that we not retreat to this position of party government, but let the Senate of the United States stand where it has always stood as the great forum of the American people, of the American Nation, and of the constitutional American Republic."

That is a point upon which I urge the Senators to think seriously. It will be, I believe, a sad day when the rules of the Senate can be written in the national conventions of any political party. I realize, of course, that the Democratic convention of last summer did not suggest that the rules of the Senate be changed. But, Mr. President, both parties adopted plans and presented promises which some leaders thought would necessitate limitations on debate here—if those planks and those promises were to be fulfilled. If we submit now to this effort to change the rules, we will be submitting to the dangerously unsound proposition that a political party shall be entitled not merely to representation by its Members here, but to the greater and overwhelming power of dictating how the business of the Senate shall be conducted.

On Saturday, the distinguished junior Senator from Arkansas [Mr. FULBRIGHT] pointed out very effectively that it is characteristic of strong executives to become impatient with any obstruction which thwarts their exercise of power. Political parties suffer some of the same characteristics. If, though, we change the rules here to oblige the executive and oblige victorious parties, we may make those executives and those parties stronger, but we most certainly shall not be making our Government stronger. We shall, instead, be taking away from the strength of the Government. We shall be opening the way to rule by political leaders and closing the door on government by responsible and duly elected officials.

That brings us to another consideration I should like to review, without thought of personalities, present or past.

I sincerely believe that the right of unlimited debate in the Senate is an essential safeguard against potential total supremacy of the executive branch.

A man elevated to the office of the Presidency has virtually unlimited powers of influence over his countrymen. His own personality is a force of great impact upon all the people of the Nation and, in fact, upon the people of the world. Add to those powers directly all those less-conspicuous powers of his aides, his administrative agencies, and the multitude of channels which feel his influence, and you have a force no other representative government has ever entrusted for long to one man.

If on occasion you grant to this titular head of government the further intoxicant of an overwhelming majority of loyal supporters in the legislative branch, then, Mr. President, you have a force well-nigh irresistible. The distinctions between executive and legislative are difficult to preserve under such circumstances; mere memorandums become laws, and laws become mere memorandums.

In such a situation, which, happily, is more hypothetical than historical, the entire theory of our governmental system of checks and balances dissolves and evaporates. There is no one to check and no one to balance, unless and except the remaining minority has the prospect of holding each decision up to lengthy and thorough inspection here on the Senate floor.

FEW GOOD BILLS WRITTEN HASTILY

Delay may be bad in the legislative process, although I do not think delay is bad per se. It has been my observation that few good bills have been written hastily, and few bad measures have been written slowly.

Checks and balances, as I interpret the theory, imply that the authors of our form of government were not so worried about good legislation being delayed as they were about bad legislation being delayed not at all. I believe it was their thought that the minority, no matter how small numerically, might always have something to say that the momentary majority should hear. The right to check and balance was not granted to the majority, because a majority rarely seeks control over itself. Those rights were conceived and installed in the Constitution solely as safeguards for minorities.

Examine the branches of our Government, examine the struggles and conflicts of philosophy, and this is evident: The distinction between our form of government and totalitarian government is the distinction between the executive and legislative branches.

To whatever extent that distinction disappears, falls into disrepute or disuse, or is destroyed, to that extent this Government loses its representative character and becomes totalitarian in practice.

If that distinction be removed, the authority of the courts, of course, becomes fictional.

Fortunately, through most of our history, the voters of the various sections of the Nation have held sufficiently different opinions as to send here legislative representatives of divergent views, men and women with principles and purposes that were not all culled from the same political primer. This has preserved for us the character and purpose of Congress as a forum where representatives of many shadings of thought and ambition could assemble, where they could blend laws suited to the wants and needs of more than 150 million people. There has always been ample representation for minorities, whatever their identity or distinction.

But, as I stated earlier, the last two decades have brought us the advent of instantaneous communications, and with that a standardization of reported information, information which is frequently all too brief and consequently misleading. Yet its influence on the opinion and viewpoint of the American people is profound.

Political beliefs are not immune; rather, they are particularly vulnerable, much more likely to succumb to the constant hammering of standardization than our religious, ethical, or moral beliefs. Many commentators already insist that the distinction in professed beliefs of our major political parties is disintegrating and remains only as a matter of emphasis.

This may be good. I do not propose to pass final judgment here, but this I believe: There is rarely one and only one proper answer to any problem, particularly the sort of delicate, complex problems presented to the legislative branch of this Government.

CONFLICT AND COMPROMISE

Lasting answers evolve from conflict and compromise. A gag rule is the trademark of temporary solutions arrived at by lazy minds. Yet the whole trend of our modern day thinking, as exemplified in this cloture resolution, is toward a gag rule and glorification of an unchallenged majority.

We—and I am speaking of all the Nation—read the same news, hear the same opinions on the radio, see the same personalities on the screen, and arrive, at approximately the same time, at the same conclusions. We think we have been thinking and congratulate ourselves on having thought alike, when actually we have not thought at all.

To me, all this is disturbing.

I am distressed by the regimentation, conscious or not, of our opinions, so that if we once make the wrong assumption and proceed on that judgment, we will plunge heading to disaster with no one to warn us. But, Mr. President, I am more than distressed, I am genuinely alarmed, when this emphasis on standardization, and regimentation, if you please, paralyzes the judgment of a legislative body which was created to give sanctuary to disagreements.

If we fall prey to this trend here in the Senate, then the legislative branch of Government will surrender its most effective guarantee of a check on itself and a balance against the executive branch. For unlimited debate is a check on rash action within the legislative channels and a balance against abuses in the executive branch. Furthermore, we will be surrendering this guarantee at a time in our history when all evidence indicates a greater need to preserve and encourage the right to criticize and challenge mass opinion.

ROLE OF THE HOUSE

Like many of the Members of the Senate, I served for a number of years in the House of Representatives, at the other end of the Capitol, before coming to the Senate. I think I understand what that body can do and what it cannot do as a part of the legislative branch. It can and does feed a great quantity of new ideas into the bloodstream of legislative thinking, because of its large and diverse membership. The House, also, is a great legislative laboratory for perfecting legislation, correcting oversights, and preventing impositions harmful to specific areas or groups.

But—and this I say with no intention to minimize the House's role—the House does not and cannot exert the force upon the Nation's political thinking that the Senate has

and still does. Nor, in fact, does the House exert the equivalent influence upon the executive branch; its Members are not so secure in tenure, the frequent elections subject the Members to whims of public opinion, which, as we all know, can sometimes be aroused and inflamed by the leaders of the executive branch.

Why is the House in this role? Because there is no unlimited debate there. A Member must ofttimes beg for a chance to address his fellow Members, and then he is limited generally to 5 minutes or less. In that short time, he is fortunate if he can impress any of his colleagues, much less impress the Nation. As a consequence, the floor of the House and the cloakrooms constitute a national legislative workshop.

SENATE IS A NATIONAL FORUM

That leaves to the Senate the role of a national forum, where the underlying philosophy of legislation, as well as the surface details, can be laid bare for the public to contemplate. That in itself is a persuasive argument to me for lengthy and thorough debates on fundamental issues.

When a Senator speaks at length, it seems to me he is speaking, not alone to his colleagues, but to the Nation. Certainly history shows that the Nation frequently listens. To cut off any Senator from further debate is to cut off the Nation from further opportunity to become acquainted with the proposals affecting our people. Personally, I believe it is better for the Nation to hear too much about a bill before it becomes law than to know too little about it after that bill becomes a law.

So, Mr. President, it is my conviction that the right of unlimited debate here in the Senate is an essential safeguard in our American system of representative government; first, as a safeguard for the public's right to full information on all legislative decisions; second, as a safeguard against the deliberate or accidental destruction of the distinctions between the legislative and other branches of government; third, as a safeguard for Members here—both majority and minority—against rash, impetuous action, or action predicated on incomplete or inaccurate information.

It is well, perhaps, to add to this discussion an examination of the filibuster in actual practice. I do not wish to burden the ears of the Senators here or the pages of the RECORD with a repetition of history already presented so ably by various of my colleagues. But I do not honestly believe we can come to the heart of the debate unless and until some of the mythology of filibusters is exposed as more fiction than fact.

What, for example, does the average American citizen interested in affairs of his Government believe about the filibuster?

FILIBUSTER NOT SOUTH'S PROPERTY

First, I believe it is a widespread conviction that the filibuster is now and has always been exclusively the property of southern Senators. For the past few years this has been so as to certain pieces of legislation which, by their nature, concerned the South primarily. This is not necessarily a traditional alinement.

When the cloture resolution under which we now operate here in the Senate was adopted back in 1917, the southern Members of the Senate at that time voted for it, as did virtually all Senators on both sides of the aisle. One year later, the Underwood resolution, to limit debate during wartime to 1½ hours for each Senator, was brought before the Senate. That was even more drastic than the cloture proposed now. I was impressed, though, when I looked over a tabulation of the voting on that resolution. Voting for the resolution, and thus voting against filibusters, or even very extensive debate, were a majority of the Senators from Southern States. The bulk of the opposition to the measure came from 29 Republican Party members.

Through the years there have been similar votes in which some southern Senators have been as vigorously opposed to the filibuster as Senators from other regions are today. I do not believe it can be shown that the South created the filibuster, or that only the South has defied the rest of the Nation in preserving it.

FILIBUSTERS NOT COMMONPLACE

Another concept prevailing in the public mind is the idea that the Senate does nothing but waste valuable time while a minority of its Members engage in filibusters. Cartoonists, literary artists, and sponsors of a lot of ill-considered ideas have labored long and with some success to implant this concept in the public mind.

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

Mr. JOHNSON of Texas. I yield for a question only.

Mr. CONNALLY. The Senator adverted a little while ago to the fact that some of these so-called filibusters—I repeat, so-called—were carried on by Senators from the South. Is it not true that the reason that has happened is that the legislation the southern Senators were opposing was aimed at the Senators from the South, and was presented from a geographical and a political standpoint?

Mr. JOHNSON of Texas. The Senator speaks quite correctly, and I shall discuss some of that legislation in detail a little later in my remarks. I thank the senior Senator from Texas.

Frankly, until the resolution came under consideration here, I did not know what the truth was. I rather thought that filibusters were more or less commonplace affairs here in the Senate. But since this matter came before us, I have studied the history of filibusters and I have been surprised at what the true history of the filibuster is. From 1841 through 1948, only about 35 important filibusters have been conducted on the Senate floor. When we consider the tremendous volume of legislation passing through here without filibuster, that number seems surprisingly small.

ONLY FIVE BILLS DEFEATED

What have these filibusters accomplished? As Senators have heard, and as many of them know, some 26 different bills have been temporarily defeated. I say temporarily because all except five of the measures filibustered have since become law—some within a few days, some within a few weeks and a few such measures were delayed for a number of years. But just to reemphasize the record, I want to list the bills which, so far, have failed to become law because of filibusters:

First. The Force bill of 1890.

Second. The armed ship bill of 1917, which was actually not necessary since our merchant ships were armed under another existing statute.

Third. The antilynching bills.

Fourth. The anti-poll-tax bills.

Fifth. The FEPC bill.

That, Mr. President, is the list, the casualty list of filibusters.

Some of the proponents of the resolution contend that the fatality list should include some bills which were never brought to the floor for fear of a filibuster. That is easily said. But it might be more accurate to say only that a number of bills were never brought to the floor because their sponsors knew they would fail if brought to a vote. If you are going to indict the filibuster as a killer, indict it, please, only for the deaths of bills actually killed by filibusters, not for the deaths of weak-spined legislation which died of fright at the prospect of unlimited debate.

The fact remains, nevertheless, that filibusters have not occupied the majority nor even a significant portion of the Senate's time during the past 108 years. Filibusters have not killed off a great amount of legislation; instead, the overwhelming majority of bills filibustered have eventually become law. Only five bills can truthfully be listed as victims of the filibuster.

The Force bill of 1890 is a dead issue; history seems to agree that it was an unfortunate measure which should not have been passed anyway.

This armed ship bill became a dead issue almost immediately after its defeat, because it was not necessary.

I think I am safe in saying that no proponents of our present cloture resolution are in the least concerned over what happened to those two particular pieces of legislation. The defeat of those bills did not instigate this resolution. The defeat of those bills did not inflame the public hue and cry against unlimited debate in the Senate.

CIVIL RIGHTS FUNDAMENTAL ISSUE

No, Mr. President; when we strip away the trappings of rhetoric and theory and legend which surround the arguments here against the filibuster, we have left the simple fact that we are debating the so-called civil rights legislation.

Some men, and some groups, have grown tired of exposing their measures for abolition of the poll tax, for punishment of lynch mobs, and for establishment of a Fair Employment Practices Commission to full debate in the Senate of the United States. In their estimate of freedom, the freedom to speak here in the Senate is expendable and they are willing to demand its sacrifice for the theoretical gain of having these civil rights measures enacted into law promptly. So, in great haste, and with a certain amount of strange illogic the strategy calls for depriving one minority of its rights in order to extend rights to other minorities.

As I said earlier here, Mr. President, freedom is not something which can be subtracted in one place and added somewhere else.

This civil rights question brings into play all those strong and evil forces of racial prejudice. Perhaps no prejudice is so contagious or so dangerous as the unreasoning prejudice against men because of their birth, the color of their skin, or their ancestral background. Racial prejudice is dangerous because it is a disease of the majority, endangering minority groups. I say frankly that the Negro—as the minority group involved in this discussion of civil rights—has more to lose by the adoption of any resolution outlawing free debate in the Senate than he stands to gain by the enactment of the civil rights bills as they are now written. Certainly these laws might give the Negro some opportunity to see those punished who interfered with his rights, but I do not believe any of these bills would actually guarantee the Negro—or any other group—that his rights would not be molested. If, perchance, the prejudice against the Negro of which we in the South are accused should spread across the Nation, fanned by inflammatory incident of only passing consequence, the Negro would have no recourse to halt enactment of vicious legislation here or elsewhere if this right of unlimited debate did not exist in the Senate.

I am not being fanciful in that illustration. The Ku Klux Klan, the Black Legion, and other such bigoted and vicious organizations have never been confined solely to the South; nor has prejudice itself thrived only in the South.

When we of the South rise here to speak against this resolution or to speak against the civil-rights proposals, we are not speaking against the Negro race. We are not attempting to keep alive the old flames of hate

and bigotry. We are, instead, trying to prevent those flames from being rekindled. We are trying to tell the rest of the Nation that this is not the way to accomplish what so many want to do for the Negro. We are trying to tell the Senate that with all the sincerity we can command, but it seems that ears and minds were long ago closed.

I say this because I want my position on the civil rights legislation understood clearly.

DO NOT BELIEVE IN POLL TAX

For example, I do not believe in the poll tax as a prerequisite for voting. In all of my campaigns for public office—six times for the House and twice for the Senate—I have made my position perfectly clear, and those who voted for me understood that. I told them, as I tell Senators now, that I see no reason for the poll-tax provision in the statutes of my State. I have advocated and do advocate the repeal of the constitutional provision of Texas which makes the payment of a poll tax necessary before a citizen can vote. I point out, too, that the present Governor of Texas has recommended to the legislature the repeal of the poll-tax provision in the statutes. A resolution has been introduced in the Texas Legislature and reported favorably by a committee of the Texas Senate, traditionally the most conservative branch of the Texas Legislature, which would submit to the voters of Texas an amendment to the Constitution eliminating the payment of a poll tax as a qualification for voting.

That is as it should be. The framers of the Constitution of the United States were plain, specific, and unambiguous in providing that each State should have the right to prescribe the qualifications of its electorate and that the qualifications of electors voting for Members of Congress should be the same as the qualifications of electors voting for members of the most numerous branch of the State legislatures. For that reason, and that reason alone, I believe that the proposed anti-poll-tax measures introduced in previous sessions of this body and advocated in the President's civil rights program is wholly unconstitutional and violates the rights of the States guaranteed by section 2 of article I of the Constitution.

Believing that, I think I have the right to use my freedom to speak and stand on the floor of the Senate as long as I have the will, the determination, and the breath to oppose such a measure. I believe that I, and any other 32 Members of the Senate have as much right and the equal duty to prevent the passage of an unconstitutional law as do 9 members or 5 members of the Supreme Court to strike it down after it has been passed. I am not willing to surrender that right or that duty because the President of the United States thinks otherwise, or because of the hue and cry set up by those who claim to protect the rights of a minority while at the same time saying the majority should always rule supreme.

THE SOUTHERN POSITION

Mr. President, some Senators will find fault with that position; they may say that it answers nothing. But let me point this out to them: I, and a number of my colleagues from the southern poll-tax States, would like to have the poll tax repealed. We think that it may be done, eventually, if not this month or next month. But we know—because we know the South and because we know the people we represent—that if one of the anti-poll-tax bills is enacted, we may never see the States accept repeal of such a law. If we had a bill here and the power here to remove the laws properly and constitutionally, I, for one, would vote for repeal of the poll tax. But I do not believe that we have either the bill or the power. We would merely enact a law which, in due time, would be stricken down by the Supreme Court. Then we would have nothing. The States would be hamstrung by a hasty, ill-considered, and entirely futile act. The poll tax would remain; the right of unlimited debate would be dead, and the prospect of eliminating the poll tax would be dead. Remember that many of us agree with other Senators in opposing the poll tax. Our counsel is not insincere, nor is it founded on prejudice. We, like they, are representatives of proud people; we know what our people will accept and what they will not accept, and we urge them earnestly to heed our advice.

TEXANS DETEST LYNCHING

I, like all other citizens, detest the shameful crime of lynching just as I detest the crime of murder in every form.

In Texas, lynchings are virtually nonexistent and not thought of as a recourse of individuals seeking justice, or what they consider justice. Most Texans would be incensed at the suggestion that a lynching would be proper, no matter how vicious the crime of which a man might be suspected. I cannot speak for all the Southern States because I am not as familiar with the residents of those States. But, Mr. President, within the past 20 years new generations of Texans have reached maturity free of the ingrained hatreds and prejudices which beset their forebears who had seen more violent eras. What these Texans—young Texans, primarily—know about lynching they have learned from the same source as Americans in regions outside the South have learned. They have learned about lynching through the modern-day literature, in which so many barren authors have sought to enrich their plots with dramatic accounts of lynch law. Every lynching is a tragedy; but lynching is not, modern fiction notwithstanding, the great and fundamental tragedy of American democracy.

I say this not in an effort to summon a self-righteous argument to the defense of the South, but because I want to remind Senators of the changing character of the South. We have our faults, historical and otherwise. But if Congress is to legislate—or try to legislate—a new character for us, I think it should be mindful of conditions as they are, not as they have been pictured.

Again, I say, with respect to lynching as with respect to the poll tax, most of us agree with the motives of our colleagues, but we are trying to tell them that the method proposed in the civil rights legislation will not accomplish what they intend.

The proposed antilynching bill—or those proposed in the past—would not merely punish the crime of murder, which should be punished, but would hold responsible those who are entirely innocent. It would indict as killers men and women who never held a gun in their hands; it would punish as accomplices men and women who would never associate with the irresponsible elements which perpetrate most lynchings.

I hold that if an officer fails or refuses to protect me against a mob bent upon invading my property, depriving me of my liberty to go where I please or do me physical violence, I am entitled to as much protection as a prisoner accused of crime who is likewise treated to mob violence. But these antilynching bills only propose punishment in the case of a prisoner under lawful arrest. Mr. President, an enlightened public already has rendered such a law virtually unnecessary even if it were not unwise in its scope.

One of the other civil-rights measures deserves some passing attention. That is the bill for creation of a Fair Employment Practices Commission.

This, to me, is the least meritorious proposal in the whole civil-rights program. To my way of thinking, it is this simple: If the Federal Government can by law tell me whom I shall employ, it can likewise tell my prospective employees for whom they must work. If the law can compel me to employ a Negro, it can compel that Negro to work for me. It might even tell him how long and how hard he would have to work. As I see it, such a law would do nothing more than enslave a minority.

Such a law would necessitate a system of Federal police officers such as we have never before seen. It would require the policing of every business institution, every transaction made between an employer and employee, and, virtually, every hour of an employer's and employee's association while at work.

I do not think the proposed law is workable, Mr. President. I am convinced it would do everything but what its sponsors intend. I feel certain it would reverse our entire historical trend of progress. It would do nothing more than resurrect ghosts of another day to haunt us again. It would incite and inflame the passions and prejudices of a people to the extent that the chasm of our differences would be irreparably widened and deepened.

I can only hope sincerely that the Senate will never be called upon to entertain seriously any such proposal again.

Those are my feelings, Mr. President. I pray that they will not seem either unreasonable or narrowly prejudiced.

For those who would keep any group in our Nation in bondage, I have no sympathy or tolerance. Some may feel moved to deny this group or that the homes, the education, the employment which every American has a right to expect, but I am not one of those. My faith in my fellow man is too great to permit me to waste away my lifetime burning with hatred against any group. I believe, and I believe sincerely, that we have a system of representative government which is strong enough, flexible enough, and fair enough to permit all groups to work together toward a better life.

I believe, Mr. President, that we can find the fair and permanent answers to our problems of housing, education, medical care, income—and all the other domestic issues—without reducing government to an absurdity by attempting to police the most intimate thoughts of our populace. I do not concede to Federal law an obligation which I think rightfully belongs to education, and which education alone can discharge. These advances must come and will only come as an outgrowth of conviction, not by compulsion.

Mr. President, we in the Senate should learn the facts of life. We cannot legislate love. We can, and as a nation we do, work together. We have done that in the past. We are doing it today. It is my conviction, though, that the opportunity for unlimited debate—somewhere within the framework of our Government—will be a greater aid to unity and cooperation and justice than any of the laws presented to us in the civil rights program.

I realize, Mr. President, that it is easy for a young man to say, "We're going to roll up our sleeves and remake the world." I know the temptation is great for young men to assume that speed and progress are one and the same thing; that if you move rapidly, you move forward.

No nation, though, can long survive if its lawmakers legislate only from day to day. Somewhere within the fabric of our actions we must weave the sturdy fibers of our past, lest what we do in haste today unravel tomorrow. Read the history of our Nation, the history of American democracy, and I think it seems clearly evident that few things have contributed more to our solidarity, to our emerging maturity, or to our stature as citizens of the world than the debates conducted here in the Senate Chamber. Debate here has been, perhaps, the sturdiest fiber of our design for more representative government.

That is as it should be, Mr. President, and as it must be. As nations go we are young.

both in terms of physical existence and in concepts of what we want to do. From the start we have had to proceed without signposts to guide us. Our concept of government has been an experiment, and it remains so today. We have nothing but our own reason to guide us; there are no precedents, no past examples to steer us easily through the shoals of international leadership where we find ourselves today.

Our predecessors here—the great names of American political history—were keenly aware of the responsibilities resting upon their decisions. They made no effort to dismiss their duties in great haste. They weighed a man's convictions, not by the clock, but, rather, by what he had to say.

Read through the transcripts of the Senate's proceedings when giants like Webster, Calhoun, and Clay stood here. No official record was kept of the length of time they spoke, as measured in hours and minutes; but we find, if we look, that a speech by Webster, back in 1830, filled 30 pages of the Journal; John C. Calhoun's last speech on slavery in 1850 was 22 pages long; Henry Clay, speaking on the compromise of 1850, expressed his firm convictions for 26 pages. Perhaps styles of oratory have changed since those men were here. Perhaps none of us have that much to say. But, Mr. President, styles do not change in freedoms; and the inability or unwillingness of men to utilize their freedom does not justify taking of it from them.

The freedoms we enjoy today are not freedoms of our own making. Through all the long history of civilizations preceding ours, mankind's highest aspiration has been for greater freedom. It was not until this Union of States was formed a little more than a century and a half ago that freedom found a sanctuary. I do not propose to tear down that sanctuary now, in the name of haste, because I believe the freedom to speak—the freedom of unlimited debate somewhere in our lawmaking process—is the keystone of all other freedoms.

Look back at the governments of history. The senior Senator from Texas, Mr. Connally, a few days ago very appropriately referred to debates in the Roman Forum. Rome enjoyed its greatest progress, its greatest era of achievement during the days when great orators could stand in the forum and speak with freedom. When, in irritation, the Caesars and their partisans removed that freedom, Rome began fading as an influence in the world; and the way was paved for a long succession of arbitrary monarchs and dictators. The right of unlimited debate in the Senate of France was lost in 1814, a victim of cloture—and there followed a century, and longer, of internal confusion and strife. In England, the House of Commons gave up its right to unlimited debate in 1888. That nation has produced some great Prime Ministers since—men who had the privilege, as well as the talent, to speak thoroughly and forcefully, but it would be difficult for any Member of the Senate to name any lengthy list of members of Parliament who have inspired their countrymen with arguments advanced on the floor of the House of Commons since 1888.

I am no historian, but as I have studied the history of governments gone before us, I have been impressed by the fact that the freedom of unlimited debate in legislative chambers has been given up many times by members themselves who were irritated or frustrated by a minority. But so far as I have found, once that freedom was yielded, it has never been returned. If we now give up this freedom in the Senate, I, for one, do not expect to live to see its return. For that reason, I cannot and I will not join hands with those who seek to throw this freedom out the window now.

As the distinguished senior Senator from Georgia [Mr. George] said the other day, this effort to cut off unlimited debate is a whittling process, whittling at the essential freedoms of our mind. I should like to point out here to the writers with their wrathful pens, to the commentators with their caustic voices, to the cartoonists with their derisive skills, and all who join the throng to keep alive the cries against unlimited debate that we here in the Senate of the United States cherish our freedom of expression as they cherish theirs. But for the grace of God and the U.S. Senate we might today be debating the limitation of their freedom to speak or that of the press, rather than our own.

If, Mr. President, I were given a choice, if I should have the opportunity to send into the countries behind the Iron Curtain one freedom and only one, I know what my choice would be. I would send to those lands the very freedom we are attempting to disown here in the Senate. I would send to those nations the right of unlimited debate in their legislative chambers. It would go as merely a seed, but the harvest would be bountiful; for by planting in their system this bit of freedom we would see all freedoms grow, as they have never grown before on the soils of eastern Europe.

This freedom we debate, Mr. President, is fundamental and indispensable. It stands as the fountainhead of all our freedoms. If we now, in haste and irritation, shut off this freedom, we shall be cutting off the most vital safeguard which minorities possess against the tyranny of momentary majorities. I do not want my name listed as one of those who took this freedom away from the world when the world most needed it.

The ACTING PRESIDENT pro tempore. The time of the Senator from Illinois has expired. All time has expired.

One hour having elapsed since the convening of the Senate today, the Chair, under the rule, lays before the Senate the pending cloture motion, and directs the Secretary to call the roll, to ascertain the presence of a quorum.

The Sergeant at Arms is directed to enforce the provisions of rule XXXIII, which provides for those who have the privilege of the floor. The Sergeant at Arms is admonished that clerks to the Senate and clerks to Senators and to committees are allowed the privilege of the floor only when they are in the actual discharge of their duties. All those who have not the privilege of the floor under rule XXXIII will immediately leave the Chamber. The Sergeant at Arms is directed to carry out the order of the Chair.

The clerk will call the roll.

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

[No. 280 Leg.]

Aiken	Dirksen	Humphrey
Allott	Dodd	Inouye
Anderson	Dominick	Jackson
Bartlett	Douglas	Javits
Bayh	Eastland	Johnston
Beall	Edmondson	Jordan, N.C.
Bennett	Ellender	Jordan, Idaho
Bible	Engle	Keating
Boggs	Ervin	Kennedy
Brewster	Fong	Kuchel
Burdick	Fulbright	Lausche
Byrd, Va.	Goldwater	Long, Mo.
Byrd, W. Va.	Gore	Long, La.
Cannon	Gruening	Magnuson
Carlson	Hart	Mansfield
Case	Hartke	McCarthy
Church	Hayden	McClellan
Clark	Hickenlooper	McGee
Cooper	Hill	McGovern
Cotton	Holland	McIntyre
Curtis	Hruska	McNamara
Mechem	Pell	Stennis
Metcalf	Prouty	Symington
Miller	Proxmire	Talmadge
Monroney	Randolph	Thurmond
Morse	Ribicoff	Tower
Morton	Robertson	Walters
Moss	Russell	Williams, N.J.
Mundt	Saltonstall	Williams, Del.
Muskie	Scott	Yarborough
Nelson	Simpson	Young, N. Dak.
Neuberger	Smathers	Young, Ohio
Pastore	Smith	
Pearson	Sparkman	

The ACTING PRESIDENT pro tempore. A quorum is present.

The Sergeant at Arms is admonished that the only persons who may remain in the Chamber are those who have the privilege of the floor. Again, the Chair calls attention to the rule that clerks and members of the staffs of committees and Senators are allowed on the floor only to assist Senators in the actual discharge of their official duties.

The Senate is now approaching a vote. The present occupant of the Chair does not see how clerks and members of the staff can come under the rule of the privilege of the floor.

A quorum being present, the Chair submits to the Senate, without debate, the question: Is it the sense of the Senate that the debate shall be brought to a close?

The yeas and nays are required by the rule; and the Secretary will call the roll.

The Chief Clerk called the roll.

The yeas and nays resulted—yeas 71, nays 29, as follows:

[No. 281 Leg.]

YEAS—71

Aiken	Gruening	Monroney
Allott	Hart	Morse
Anderson	Hartke	Morton
Bartlett	Hickenlooper	Moss
Bayh	Hruska	Mundt
Beall	Humphrey	Muskie
Boggs	Inouye	Nelson
Brewster	Jackson	Neuberger
Burdick	Javits	Pastore
Cannon	Jordan, Idaho	Pearson
Carlson	Keating	Pell
Case	Kennedy	Prouty
Church	Kuchel	Proxmire
Clark	Lausche	Randolph
Cooper	Long, Mo.	Ribicoff
Cotton	Magnuson	Saltonstall
Curtis	Mansfield	Scott
Dirksen	McCarthy	Smith
Dodd	McGee	Symington
Dominick	McGovern	Williams, N.J.
Douglas	McIntyre	Williams, Del.
Edmondson	McNamara	Yarborough
Engle	Metcalf	Young, Ohio
Fong	Miller	

NAYS—29

Bennett	Hayden	Simpson
Bible	Hill	Smathers
Byrd, Va.	Holland	Sparkman
Byrd, W. Va.	Johnston	Stennis
Eastland	Jordan, N.C.	Talmadge
Ellender	Long, La.	Thurmond
Ervin	McClellan	Tower
Fulbright	Mechem	Walters
Goldwater	Robertson	Young, N. Dak.
Gore	Russell	

The ACTING PRESIDENT pro tempore. Two-thirds of the Senators present having voted in the affirmative, the motion is agreed to.

The question now is on agreeing to amendments No. 577, proposed by the Senator from Louisiana [Mr. LONG], to amendments No. 513, proposed by the Senator from Georgia [Mr. TALMADGE], relating to jury trials in criminal contempt cases.

Mr. RUSSELL. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator from Georgia will state it.

Mr. RUSSELL. Did the Senator from Illinois offer the leadership "package" proposal?

The ACTING PRESIDENT pro tempore. The Senator from Illinois sent forward the amendment, to lie on the table and be printed.

Mr. RUSSELL. That amendment cannot be proposed so long as the Long amendment is pending to the original bill, can it?

The ACTING PRESIDENT pro tempore. Not so long as any perfecting amendment to the Talmadge amendment is pending.

Mr. LONG of Louisiana. Mr. President, I ask unanimous consent that I may withdraw my amendment to the Talmadge amendment.

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

The question now is on agreeing to the Mansfield-Dirksen substitute for the jury-trial amendment.

AMENDMENT NO. 798

Mr. ERVIN. Mr. President, I call up my amendment No. 798, which is a perfecting amendment to the Talmadge amendment.

The ACTING PRESIDENT pro tempore. The amendment to the amendment will be stated.

The CHIEF CLERK. In amendment No. 513, on page 4, it is proposed to insert a new section between line 7 and 8, reading as follows:

SEC. 1104. No person should be put twice in jeopardy for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this Act; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for a specific crime based upon the same act or omission.

Mr. HUMPHREY. Mr. President, will the Senator from North Carolina yield, to permit me to propound a parliamentary inquiry?

Mr. ERVIN. Yes, with the understanding that the time required for the inquiry will not be taken out of the 60 minutes available to me.

Mr. HUMPHREY. Yes, indeed.

Mr. President, I rise to a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota will state it.

Mr. HUMPHREY. Is it not a fact that the yeas and nays have been ordered on the question of agreeing to the so-called Dirksen-Mansfield jury trial amendment?

The ACTING PRESIDENT pro tempore. The Chair is so informed.

Mr. HUMPHREY. In view of the action taken yesterday on the Morton amendment and in view of the fact that the Morton amendment has now been incorporated into the leadership "package" substitute, would not it be proper that we ask unanimous consent to vacate the order for the yeas and nays and also to withdraw the Dirksen-Mansfield amendment?

The ACTING PRESIDENT pro tempore. That may be done.

Mr. HUMPHREY. Mr. President, will the Senator from North Carolina yield, for that purpose?

Mr. ERVIN. Yes, with the understanding that any time required for that purpose will not come out of my 60 minutes.

Mr. HUMPHREY. Then, Mr. President, in order to clarify the parliamentary situation, I now ask unanimous consent that the Dirksen-Mansfield jury trial amendment, on which the yeas and nays have been ordered, be withdrawn, and that the order for the yeas and nays on the question of agreeing to that amendment be vacated.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. JAVITS. Mr. President, reserving the right to object——

Mr. MANSFIELD. Mr. President, we are now proceeding under the time limitation, of course.

The ACTING PRESIDENT pro tempore. Yes. Every Senator will be speaking in his limited time.

Mr. JAVITS. Mr. President, I yield myself 1 minute.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized for 1 minute.

Mr. JAVITS. Mr. President, I think it is most unfortunate that we are denied reasonable opportunity to have debate on the bill and on the substitute. However, the Senator from Minnesota has made a commitment, and he is floor manager of the bill. I am not happy about the commitment, but I shall abide by it.

I think the distinguished Senator feels, as I do, that the other body will not accept this amendment. It did not accept it before. This is not a shibboleth for us or something whereby we shall be absolutely shipwrecked, of course. What action may be taken by the other body is something we cannot tell at this time. In short, it will be a provisional bill. We cannot get away from that. The Senator is committed; but at the same time, we shall be handicapped. In order to get a bill under consideration, we must make some compromise on this provision. So we must be openminded about it.

Mr. HUMPHREY. I can only speak for the Senator from Minnesota. We are honorbound by the commitment. What happens in the future must be determined by the two Houses of Congress, but I have made a commitment and I intend to stand by it.

Mr. JAVITS. And I will support the Senator in it.

Mr. MILLER. Mr. President——

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. MILLER. Mr. President, I yield myself 30 seconds.

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized for 30 seconds.

Mr. MILLER. Mr. President, I want to ask the Senator from Minnesota when this amendment was incorporated in the substitute?

Mr. HUMPHREY. This morning, at the desk.

Mr. MILLER. Was that done as a perfecting modification?

Mr. HUMPHREY. It was a new substitute proposal which displaces the one that had previously been entered. The only change is the modification.

Mr. MILLER. Mr. President, a parliamentary inquiry.

Mr. HUMPHREY. On the Senator's own time, please.

Mr. MILLER. Yes.

Is the modification with respect to the jury trial provision of the bill subject to amendment now?

The ACTING PRESIDENT pro tempore. The substitute may be offered at the proper time, and then any part of the substitute will be open to amendment.

Mr. MILLER. Including the jury trial provision?

The ACTING PRESIDENT pro tempore. Yes, including the jury trial provisions. Is there objection? The Chair hears none; and the amendment is withdrawn.

The question is on agreeing to the amendment offered by the Senator from North Carolina [Mr. ERVIN].

Mr. ERVIN. Mr. President, I yield myself 3 minutes of my 60 minutes.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized for 3 minutes.

Mr. ERVIN. Mr. President, yesterday, when the Senate adopted the Morton amendment, it wiped out one of the disgraces and inequities of the Federal law with respect to criminal contempt.

I ask that another of these inequities and injustices now be wiped out. This amendment does not affect the power of a court to punish a man for civil contempt to enforce a judgment. This amendment applies only to criminal contempts and crimes.

Under existing Federal law, a person can be put three times in jeopardy for an act or omission constituting a criminal contempt if such act or omission also constitutes a crime.

First, he can be punished for civil contempt.

Second, he can be punished in the way a criminal is punished for the criminal contempt.

Third, he can be punished for the crime.

I am proposing to wipe out a part of this three-branched jeopardy.

I reiterate that this amendment does not affect the power of the court in civil contempt proceedings to enforce its judgments. It merely provides that an acquittal or conviction in a proceeding for criminal contempt arising under the provisions of the bill shall bar a subsequent prosecution for a crime based on the same act or omission; and that an acquittal or conviction in a prosecution for a specific crime shall bar a subsequent proceeding for a criminal contempt arising under the provisions of the bill out of the same act or omission. This is a just provision and it brings the law as to criminal contempts and as to crimes

into harmony with the constitutional provision that no man shall be twice put in jeopardy for the same offense.

Mr. MANSFIELD. Mr. President, I yield myself 1 minute.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized for 1 minute.

Mr. DIRKSEN. Will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. DIRKSEN. Mr. President, I wish to ask the distinguished majority leader about the procedure, now that we are operating under cloture.

Mr. MANSFIELD. In response to the question raised by the Senator from Illinois, let me say I think it would be advisable for Senators to remain in the Chamber from now on. We are operating under the 1-hour allowance per Senator, or the 100-hour rule, following cloture. There may be votes at any time.

It is anticipated that the Senate will continue to convene at 10 o'clock in the morning, including Saturdays, and will stay in session until a reasonable hour at night, say 8 o'clock or 9 or, if need be, a little later.

So I think it would be advisable for Senators to remain on the floor as much as they possibly can, from now on.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from North Carolina [Mr. ERVIN].

Mr. ERVIN. Mr. President, on this question, I ask for the yeas and nays.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. On the question of agreeing to the amendment of the Senator from North Carolina [Mr. ERVIN] the yeas and nays have been ordered; and the clerk will call the roll.

The legislative clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from Wyoming [Mr. MCGEE], and the Senator from Wisconsin [Mr. NELSON] are absent on official business.

I also announce that the Senator from California [Mr. ENGLE] is absent because of illness.

I further announce that, if present and voting, the Senator from California [Mr. ENGLE] would vote "nay."

The yeas and nays resulted—yeas 49, nays 48, as follows:

[No. 282 Leg.]

YEAS—49

Bennett	Hill	Proxmire
Bible	Holland	Robertson
Byrd, Va.	Hruska	Russell
Byrd, W. Va.	Jackson	Simpson
Cannon	Johnston	Smathers
Cooper	Jordan, N.C.	Sparkman
Cotton	Jordan, Idaho	Stennis
Curtis	Lausche	Symington
Eastland	Long, Mo.	Talmadge
Edmondson	Long, La.	Thurmond
Ellender	McClellan	Tower
Ervin	Mechem	Walters
Fulbright	Monroney	Williams, Del.
Goldwater	Morton	Yarborough
Gore	Mundt	Young, N. Dak.
Hayden	Pastore	
Hickenlooper	Pell	

NAYS—48

Aiken	Bayh	Burdick
Allott	Beall	Carlson
Anderson	Boggs	Case
Bartlett	Brewster	Church
Clark	Keating	Moss
Dirksen	Kennedy	Muskie
Dodd	Kuchel	Neuberger
Dominick	Magnuson	Pearson
Douglas	Mansfield	Prouty
Fong	McCarthy	Randolph
Gruening	McGovern	Ribicoff
Hart	McIntyre	Saltonstall
Hartke	McNamara	Scott
Humphrey	Metcalf	Smith
Inouye	Miller	Williams, N.J.
Javits	Morse	Young, Ohio

NOT VOTING—3

Engle	McGee	Nelson

The ACTING PRESIDENT pro tempore. The Chair is informed by the clerk that the yeas are 47, the nays are 48; and the amendment is rejected.

Mr. MANSFIELD subsequently said: Mr. President, things are becoming somewhat hectic this morning. I would hope that we would all work together to try to clarify the atmosphere, at least to a degree.

It is my understanding that the yea-and-nay vote on the Ervin amendment was incorrectly announced. Will the Chair either confirm or deny that statement?

The ACTING PRESIDENT pro tempore. The Chair was informed that the vote on the Ervin amendment was 47 yeas and 48 nays, and that the amendment was not agreed to. The Chair is now informed by the clerk that, on recalculation, the vote is 49 yeas and 48 nays. So the amendment is agreed to. It is so ordered.

Mr. RUSSELL. I am glad that the clerk at least admitted his error.

Mr. President——

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. RUSSELL. Mr. President, I send an amendment to the desk.

The ACTING PRESIDENT pro tempore. The question is now on agreeing to the Talmadge amendment.

The Senator will suspend until there is order. The Senate is not in order. The Senator from Georgia seeks recognition.

Mr. RUSSELL. Mr. President, I desire to propose an amendment to the substitute, but I understand that is not in order at this time.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. RUSSELL. Mr. President, I suppose, then, that under the circumstances the only way out of this predicament is to proceed to vote on the Talmadge amendment. On this question, I ask for the yeas and nays.

The yeas and nays were ordered.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll, to ascertain the presence of a quorum.

The Chief Clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the roll, for a quorum, be rescinded.

Mr. RUSSELL. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard. The call of the roll will continue.

The rollcall was resumed and concluded; and the following Senators answered to their names:

[No. 283 Leg.]

Aiken	Gruening	Morse
Allott	Hart	Morton
Anderson	Hartke	Moss
Bartlett	Hayden	Mundt
Bayh	Hickenlooper	Muskie
Beall	Hill	Nelson
Bennett	Holland	Neuberger
Bible	Hruska	Pastore
Boggs	Humphrey	Pearson
Brewster	Inouye	Pell
Burdick	Jackson	Prouty
Byrd, Va.	Javits	Proxmire
Byrd, W. Va.	Johnston	Randolph
Cannon	Jordan, N.C.	Ribicoff
Carlson	Jordan, Idaho	Robertson
Case	Keating	Russell
Church	Kennedy	Saltonstall
Clark	Kuchel	Scott
Cooper	Lausche	Simpson
Cotton	Long, Mo.	Smathers
Curtis	Long, La.	Smith
Dirksen	Magnuson	Sparkman
Dodd	Mansfield	Stennis
Dominick	McCarthy	Symington
Douglas	McClellan	Talmadge
Eastland	McGee	Thurmond
Edmondson	McGovern	Tower
Ellender	McIntyre	Walters
Ervin	McNamara	Williams, N.J.
Fong	Mechem	Williams, Del.
Fulbright	Metcalf	Yarborough
Goldwater	Miller	Young, N. Dak.
Gore	Monroney	Young, Ohio

The ACTING PRESIDENT pro tempore. A quorum is present.

Mr. MANSFIELD. Mr. President, I call up the Dirksen substitute.

The ACTING PRESIDENT pro tempore. That is amendment No. 656, as modified by the amendment offered by the minority leader.

Mr. RUSSELL. A point of order, Mr. President. That amendment is not in order.

The ACTING PRESIDENT pro tempore. The Chair is informed by the clerk that it is amendment No. 1052, which is a substitute offered this morning by the minority leader.

Mr. RUSSELL. Mr. President, I call up amendment No. 944.

The ACTING PRESIDENT pro tempore. The clerk will state the amendment.

The LEGISLATIVE CLERK. On page 14, after line 23, it is proposed to insert the following new section:

SEC. 208. This title shall take effect on November 15, 1965.

Mr. RUSSELL. Mr. President, the result of the vote on the last amendment shows the futility of appealing to any sense of fairness on the part of the Senate. The spirit of the mob has indeed taken over the Senate, when this body will vote down a simple amendment to preserve the rule of protecting a citizen of the United States, even if he be a despised southerner, from being put in jeopardy twice for the same offense.

Mr. President, we are confronted with the spirit of not only the mob but of a lynch mob in the Senate of the United States. Senators are paying no attention to what they are doing. They are voting to destroy one of the oldest assets of our Anglo-Saxon system of jurisprudence, in voting to put a man in jeopardy twice for the identical same state of facts.

So I say there is no need for us to expect any fairness. But we shall propose

these amendments, and we have enough votes to order the yeas and nays. The Senate can proceed to vote them down.

The amendment that I have proposed applies to title II of the bill the same theory that is applied to title VII, the fair employment practice provision, which would not take effect until 1 year after the bill is enacted. This amendment undertakes to extend to November 15, 1965, the effect of title II of this bill. The bill now is so drawn as to protect States that have some form of public accommodation laws; this amendment seeks to give the States that do not have such laws an opportunity to study this question and decide whether they want to enact public accommodation laws and thereby avail themselves of the benefit of the breastworks that have been thrown up around the 32 States that already have laws on this subject.

It is an amendment that in normal circumstances would appeal to the innate sense of fairness of any man, because it merely extends to these States an opportunity that is extended to all States in title VII. It would extend to the States that do not now have public accommodation laws the opportunity to consider whether or not it is desirable for them to pass such laws and thereby achieve the beneficial results of the so-called Dirksen amendment.

Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. COOPER. Mr. President, I wish to join the Senator from Georgia in his statement about attention to amendments. It is going to be terribly difficult to hear the explanation of the amendments which will come quickly. I hope that the Presiding Officer will keep order and ask all Senators to remain in the Chamber and in their seats. Even though we have voted cloture we have the right and duty to consider each amendment on its merits.

The Senator was correct when he said, a few minutes ago, that we should have adopted the amendment which was offered by the Senator from North Carolina. The Senator from North Carolina's amendment would have sustained the principle of protecting a person from being placed in double jeopardy. The constitutional protection against double jeopardy might not apply otherwise, for criminal contempt has not been considered a crime. It was difficult to hear the Senator's explanation and the amendment was acted upon in haste. We need to hear and consider the amendments which will be offered to the bill in rapid succession.

Mr. HUMPHREY. Mr. President, had the amendment been adopted, it would have been to the Talmadge amendment, and the Talmadge amendment would have been to the bill; but the Talmadge amendment would have been withdrawn.

Mr. President, the Constitution does not permit double jeopardy, and I think we knew what we were doing.

Mr. ERVIN. Will the Senator yield for a question?

Mr. HUMPHREY. I yield.

Mr. ERVIN. Does not the Senator from Minnesota know that the Supreme Court of the United States has held in several cases that the double jeopardy clause of the Constitution does not apply to proceedings for criminal contempt, and that in consequence of those decisions the accused can be tried and punished twice, once for criminal contempt and a second time for crime in those cases in which the same act or omission constitutes both a criminal contempt and a crime?

Mr. HUMPHREY. I understand that, but criminal contempt is a proposition entirely different from what are called ordinary crimes. Punishment for criminal contempt is a court order enforcement. While I am not a lawyer, I know that.

Mr. President, the Constitution of the United States gives ample protection. The amendment of the Senator from Georgia would merely delay the effective date of the title until November 1965. It seems to me that if equal access to public accommodations is within the Constitution, the title should be operative when the bill is passed. I hope the Senate will reject the amendment.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate stand in recess until 1 o'clock this afternoon.

Mr. RUSSELL. Mr. President, may not we have a vote on this amendment?

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Georgia. The yeas and nays have been ordered.

Mr. DIRKSEN. Mr. President, I seek recognition, to speak for 1 minute.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Illinois.

Mr. DIRKSEN. Mr. President, I hope Senators are aware of the amendment on which we shall vote. It postpones the effective date of title II until November, 1965. That will be, roughly, 16 or 17 months away.

Mr. RUSSELL. The Senate extended the effective date of the FEPC title until 1 year after the enactment of the bill.

Mr. MANSFIELD. Mr. President, I understand that the Senate is ready to vote on the proposal offered by the distinguished Senator from Georgia.

The ACTING PRESIDENT pro tempore. Unless some Senator is seeking recognition.

Mr. MANSFIELD. Mr. President, I ask that the vote be taken, and that at the conclusion of the vote, the Senate stand in recess until 1 o'clock.

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

The question is on agreeing to the amendment of the Senator from Georgia [Mr. RUSSELL]. The yeas and nays have been ordered, and the clerk will call the roll.

The Chief Clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from California [Mr. ENGLE], is absent because of illness.

I further announce that, if present and voting the Senator from California [Mr. ENGLE], would vote "nay."

The result was announced—yeas 40, nays 59, as follows:

[No. 284 Leg.]

YEAS—40

Bennett	Hayden	Russell
Bible	Hickenlooper	Simpson
Byrd, Va.	Hill	Smathers
Byrd, W. Va.	Holland	Sparkman
Cannon	Hruska	Stennis
Cotton	Johnston	Talmadge
Curtis	Jordan, N.C.	Thurmond
Dominick	Jordan, Idaho	Tower
Eastland	Long, La.	Walters
Ellender	McClellan	Williams, Del.
Ervin	McIntyre	Yarborough
Fulbright	Mechem	Young, N. Dak.
Goldwater	Morton	
Gore	Robertson	

NAYS—59

Aiken	Hart	Morse
Allott	Hartke	Moss
Anderson	Humphrey	Mundt
Bartlett	Inouye	Muskie
Bayh	Jackson	Nelson
Beall	Javits	Neuberger
Boggs	Keating	Pastore
Brewster	Kennedy	Pearson
Burdick	Kuchel	Pell
Carlson	Lausche	Prouty
Case	Long, Mo.	Proxmire
Church	Magnuson	Randolph
Clark	Mansfield	Ribicoff
Cooper	McCarthy	Saltonstall
Dirksen	McGee	Scott
Dodd	McGovern	Smith
Douglas	McNamara	Symington
Edmondson	Metcalf	Williams, N.J.
Fong	Miller	Young, Ohio
Gruening	Monroney	

NOT VOTING—1

Engle

So Mr. RUSSELL's amendment was rejected.

Mr. DIRKSEN. Mr. President, I move that the vote by which the amendment was rejected be reconsidered.

Mr. HUMPHREY. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

RECESS TO 3 P.M.

Mr. MANSFIELD. Mr. President, I modify my previous unanimous-consent request, and ask that a recess be taken until 3 o'clock this afternoon so as to give us a chance to regroup, rethink, and recollect.

Mr. HUMPHREY. And also to refresh.

Mr. MANSFIELD. Yes.

The ACTING PRESIDENT pro tempore. Is there objection?

There being no objection, at 12 o'clock and 14 minutes p.m., the Senate took a recess to 3 o'clock p.m.

At 3 o'clock p.m., the Senate reassembled, and was called to order by the Presiding Officer (Mr. NELSON in the chair).

Mr. MANSFIELD. 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. 285 Leg.]

Aiken	Byrd, Va.	Dodd
Allott	Byrd, W. Va.	Dominick
Anderson	Cannon	Douglas
Bartlett	Carlson	Eastland
Bayh	Case	Edmondson
Beall	Church	Ellender
Bennett	Clark	Ervin
Bible	Cooper	Fong
Boggs	Cotton	Fulbright
Brewster	Curtis	Goldwater
Burdick	Dirksen	Gore

Gruening	Mansfield	Proxmire
Hart	McCarthy	Randolph
Hartke	McClellan	Ribicoff
Hayden	McGee	Robertson
Hickenlooper	McGovern	Russell
Hill	McIntyre	Scott
Holland	McNamara	Simpson
Hruska	Mechem	Smathers
Humphrey	Metcalf	Smith
Inouye	Miller	Sparkman
Jackson	Monroney	Stennis
Javits	Morse	Symington
Johnston	Morton	Talmadge
Jordan, N.C.	Moss	Thurmond
Jordan, Idaho	Mundt	Tower
Keating	Muskie	Walters
Kennedy	Nelson	Williams, N.J.
Kuchel	Neuberger	Williams, Del.
Lausche	Pastore	Yarborough
Long, Mo.	Pearson	Young, N. Dak.
Long, La.	Pell	Young, Ohio
Magnuson	Prouty	

The PRESIDING OFFICER. A quorum is present.

Mr. MANSFIELD. Mr. President, I yield myself 1 minute.

I talked some things over with the minority leader, but I have forgotten one or two. I will, however, recite what I remember.

First, we would like the reading clerks to be the timekeepers, because we feel that the Parliamentarian has to be ready to answer parliamentary questions and inquiries. It is too much of a burden on him to keep time, also.

Second, the 20-minute allowance for quorum calls will no longer be in effect.

The PRESIDING OFFICER. The Dirksen amendment is open to amendment.

Mr. GORE obtained the floor.

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

Mr. GORE. I yield, but not on my time.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that despite rule XXII, two reading clerks be allowed to keep the time.

The PRESIDING OFFICER. Is there objection? The Chair hears none. Without objection, it is so ordered.

Mr. HRUSKA. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. GORE. Mr. President, I yield to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator may not yield time.

Mr. HRUSKA. I will use my own time.

My parliamentary inquiry is this, Mr. President: When quorums are called for, is any time charged, and to whom is the time for the quorum calls charged?

The PRESIDING OFFICER. The Parliamentarian informs the Chair that unless some Senator makes a point of order, the time will not be charged against the Senator holding the floor.

Mr. HRUSKA. Mr. President, what is this point of order? After all, cloture as I understand it, is a limitation on debate; and after cloture is adopted, all time used is charged against the Senator having the floor. When a quorum is being called, no Senator is speaking.

I do not know what point of order the Chair refers to when he says the charging of the time used for that purpose is dependent on the making of a point of order.

The PRESIDING OFFICER. The time does not run against the speaker unless some Senator makes a point of order.

Mr. RUSSELL. Mr. President, I wish to serve notice that an appeal will be made the first time that ruling is invoked. The order for a quorum is one constitutional rule that is not bound up in rule XXII. The right of the Senator to ascertain a quorum is not in anywise involved in rule XXII.

Mr. HRUSKA. May I ask the Chair what is the basis of the point of order that will be made under those circumstances and under what rule?

The PRESIDING OFFICER. Whatever the basis of the point of order might be, the point of order would be made by the Senator who makes it at the time he makes it.

Mr. GORE. Will the Chair speak louder?

Mr. HRUSKA. Mr. President, I submit that the question has not been answered. The point of order is named by the Parliamentarian and is used as the basis by the Presiding Officer for saying that something can be done. So what is the conceivable basis for the point of order which might be raised, and under what rule would it be raised?

The PRESIDING OFFICER. It is the Senator who makes the point of order.

Mr. HRUSKA. He does, indeed; and the Chair has just said that a point of order would lie against this proceeding. On what basis would a point of order be raised? It is the Presiding Officer who has raised this point of order. I would like to have some idea what it is.

The PRESIDING OFFICER. The Parliamentarian advises the Chair that if a Senator makes a point of order, he assigns reasons for the point of order; and the decision will be made at the time when he raises the point of order.

Mr. HRUSKA. I join the Senator from Georgia in saying that if there is an appeal from the ruling of the Chair, it will be resisted.

The PRESIDING OFFICER. The Chair will rule when the issue arises.

Mr. GORE. Mr. President, I call up my amendment to strike title VI from the bill.

Mr. HUMPHREY. Mr. President, may we have order in the Chamber?

Mr. GORE. I call up my amendment No. 832.

Mr. HUMPHREY. Mr. President, may we have order in the Chamber?

Mr. GORE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GORE. Should the amendment be offered to the original bill, or to the Mansfield-Dirksen substitute?

The PRESIDING OFFICER. The Senator may offer it to either. The substitute is before the Senate.

Mr. GORE. I send to the desk amendment No. 832, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be read.

The LEGISLATIVE CLERK. In the Dirksen substitute, on page 32, beginning with line 21, it is proposed to strike out all through line 9, on page 35 (title VI), and to renumber the succeeding titles and sections of the bill.

Mr. GORE. Mr. President, I request order.

The PRESIDING OFFICER. The clerks are instructed not to charge time to the speaker until there is order in the Senate.

The Senate will be in order.

Mr. GORE. Mr. President, under the strictures of cloture, all of us must try to preserve our time on this historic occasion. I yield myself 10 minutes, and ask that I be notified when I have used 10 minutes.

The PRESIDING OFFICER. The Senator from Tennessee may proceed.

Mr. GORE. Mr. President, a basic question is involved in the provisions of title VI. This is not the first time the Senate has faced this basic question. In fact, upon many occasions during the last 10 years, in both Houses of Congress, amendments have been offered for the purpose of cutting off Federal aid to various programs, in the event certain civil rights requirements were not met. Upon each and every occasion, the Congress has refused to approve the amendments, when offered to specific programs and activities.

Title VI provides both authority and direction. Federal agencies are "authorized and directed" to proceed with the preparation of rules and regulations for the termination of Federal aid which provides Federal financial assistance. All such Federal programs are involved. I asked the Library of Congress for a list of programs which provide Federal financial assistance. A partial list provided by the Library will be found in the CONGRESSIONAL RECORD of yesterday. The experts of the Legislative Reference Service were unable to provide what the Library felt qualified to describe as a complete list. Such programs are numerous. Federal aid has so permeated our national life that there is hardly a segment of our economy or society that is not affected by Federal aid. Ships sail the high seas with the help of a Federal aid program. Homes are built, mortgages insured, farm-to-market roads are constructed, as are airports—I will not undertake to name them all—but all of these programs would, in practical effect, be amended by title VI.

I wish to acknowledge that the substitute bill provides some improvement over the language of the original bill, insofar as clarity is concerned. I addressed the Senate earlier and pointed out that the original bill authorized discretionary procedures because the word "may" was used in section 602. Insofar as clarification is concerned, the Dirksen substitute is an improvement, because it uses the words "authorized and directed." So the bill is improved as to clarity of procedure, but, at the same time its application is made more mandatory.

I wish to acknowledge further, in all fairness, that there are certain safeguards as to procedure and time which would apply to many of the programs. It will be found, however, that these so-called safeguards relate only to procedure.

It is correct that, before funds can be cut off to a State or to a county, the proposal must lie before a congressional committee 30 days. What can Congress

effectively do in 30 days under such circumstances? No power of veto is given, even by way of concurrent resolution. Congress would be required to act affirmatively by enacting a law, perhaps over Presidential veto, on a question involving civil rights in 30 days in order to stop the proposed action. The so-called safeguards, however effective the proponents of the bill may intend them to be—and I think they would be of some benefit—nevertheless relate only to procedure and time. The ultimate authority would be vested by this bill in the Federal Government to cut off funds arbitrarily and coldly, or in any other manner.

Mr. President, I think it is the responsibility of the legislative branch of Government to prescribe the conditions under which Federal aid is extended. If we surrender this responsibility to the Executive, then we will be surrendering power that may be more important than if Congress granted the Executive the power of an item veto over appropriations. We will have delegated to the Executive an important part of the legislative function and we will have seriously limited a source of legislative power, control over the purse strings. In my opinion, Mr. President, this would be an unwise act by the Congress.

In a colloquy between the distinguished senior Senator from Connecticut and me last night, he acknowledged what I believe to be correct—there is no disagreement between us as to the facts—that in those programs such as aid to vocational agriculture which provides Federal aid to help pay salaries of teachers in every high school in Arkansas, Virginia, Vermont, and all over the country, the contract is between the Federal Government and the State government. There is no way that the Federal Government can reach Smith County, Tenn., with respect to this type of Federal aid except through the State.

In section 602, the key word is "recipient." Who is the recipient of Federal aid funds? In many of our Federal aid programs, the State is the recipient. This is true of our farm-to-market road program. This is true of many other programs.

It is not true as to all programs. For instance, in the program authorizing Federal aid to impacted school districts, the contractual relationship is directly between the Federal Government and the impacted school district involved. Here there would be no question of cutting off aid to a whole State because one county "recipient" was alleged to have practiced discrimination.

I wish to refer, by way of illustration to one Federal agency, the TVA, which makes payments to communities in seven States in lieu of taxes. This bill would authorize and direct this Federal agency to proceed to promulgate rules and regulations for the withholding of aid to any State or any county in which what someone defines as discrimination is practiced. What is discrimination? This would be left for the Federal official to determine. When will an agency cut off aid? This would be left to the executive branch to determine pursuant to rules and regulations. We do not make these determinations in this bill. If so much as one rural school in a county is still on a segregated basis, then there is segregation in that county.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GORE. I yield myself 5 additional minutes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 5 more minutes.

Mr. GORE. In my view, the power conferred in this bill could be used oppressively. If an administration is inclined so to use it, title VI could be a sledge hammer provision. Federal aid permeates our whole system. We have already had an example in the State of Louisiana when aid was ordered cut off to the entire State.

Fortunately, the Senator from Connecticut [Mr. RIBICOFF] became Secretary of Health, Education, and Welfare and stayed the order. Had he not done so, the legislature not reconvening for a year, old people and dependent children would have suffered—children who had no control over the alleged failure of State officials to comply with Federal requirements.

This is a hardhearted, cold policy. It punishes innocent people for the commission of alleged wrongs over which they have no control. This is a power that the legislative branch should not vest in the executive branch without knowing just how and under what conditions it would be applied. If we wish to do this, let us take the programs up one by one. If we want to provide the conditions under which Federal aid will be cut off to the vocational agricultural teachers, and the home economics teachers, let us take the programs up and prescribe those conditions by law.

My interpretation of section 601 in title VI is that it is sufficiently broad to give statutory authority for the issuance of an open housing order affecting the entire United States. If one does not think the language is that broad, please turn to the section and read it. I shall read it.

On page 32, line 25, it reads: "or be subjected to discrimination under any program or activity receiving Federal financial assistance."

In section 602, we find the means of implementing section 601 for those programs which are described in section 602. But if we read carefully beginning line 5 of page 33 of the Dirksen substitute, we find that there is exempted from section 602 programs involving contracts of insurance or guarantee.

Mr. President, that language means that the provisions of section 602 do not apply to contracts of insurance or guarantee. It would logically follow, then, that section 601 is not modified by section 602 with respect to programs involving contracts of insurance or guarantee. If that be true, as I believe to be the case, then section 601 confers statutory authority for the issuance of an order which would affect the right of a veteran to sell his home if he has a GI home loan. It would affect the right of a man and his wife either to rent or to sell a house on which the FHA has insured a mortgage. And such an order would not be subject to the so-called safeguard provisions of section 602.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GORE. Mr. President, I yield myself 2 additional minutes; and I yield to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Tennessee may not yield from his time to the Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I yield myself 10 minutes. Whatever time is needed in the colloquy with the distinguished Senator from Tennessee should be charged to me.

Mr. MORSE. Mr. President, a point of order.

Mr. GORE. Mr. President, I did not understand.

Mr. RIBICOFF. Mr. President, a parliamentary inquiry.

Mr. GORE. Mr. President, if I cannot yield, I cannot. I will proceed for 1 additional minute, and then will yield the floor.

Mr. RIBICOFF. Mr. President, a parliamentary inquiry.

Mr. GORE. Mr. President, I do not yield the floor for a parliamentary inquiry. The time would come out of my time. I am sorry.

The Senator has been very helpful, and I am grateful to him. But we are under a stricture, in that I have only 1 hour on this whole historic bill.

Mr. President, I yield myself 1 additional minute.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 1 more minute.

Mr. GORE. I ask the Senators to read title VI. Read section 601 and determine whether or not it is sufficiently broad to cover anything and everything—any program providing Federal financial assistance. What is financial assistance? It is a guarantee of a mortgage, as well as a loan itself, or a grant of assistance. Financial assistance can take many forms—contributions, loans, guarantees, warranties, insurance.

Then, read section 601 and one will see that the section——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. RIBICOFF. Mr. President——

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. RIBICOFF. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 10 minutes.

Mr. RIBICOFF. First, let me say that last night—as shown beginning at page 13125 of the CONGRESSIONAL RECORD—the Senator from Tennessee and I entered into a colloquy on title VI. I recognize, and so does the Senator from Tennessee, that there has been much confusion concerning title VI.

It is my feeling that the colloquy which was had between the Senator from Tennessee and myself, as shown in the RECORD, should have effect on the executive branch as to how to interpret title VI.

The Senator from Tennessee mentioned the incident in Louisiana which

took place in the beginning of 1961. The fact that it was within the power of the Federal Government to cut off aid to Louisiana in the ADC program indicates the basic power to cut off funds where discrimination is involved, whether title VI is enacted or is not enacted.

The junior Senator from Louisiana [Mr. LONG], who is in the Chamber at the present time, may recall his intervening with me while I was Secretary, in an effort to have me take care of some 80,000 children involved in this cutoff.

Last night, I pointed out to the Senator from Tennessee that it is not our intention in title 6 to be punitive. It is not our intention with title 6 to come in with a sledge hammer blow and to rush to cut off funds because there is discrimination.

The entire approach of title 6 in the civil rights bill that we are about to pass is directed to ending the discrimination, rather than to cutting off funds. The fund cutoff is the last step, not the first step.

Basically, there is a constitutional restriction against discrimination in the use of Federal funds; and title VI simply spells out the procedure to be used in enforcing that restriction.

Because of the position of the Senator from Tennessee and the points he has consistently raised since this bill first was brought to the Senate, I believe he was most influential and persuasive in causing the Senator from Illinois [Mr. DIRKSEN] and the Senator from Montana [Mr. MANSFIELD] to incorporate some of his suggestions in the revised Dirksen-Mansfield proposal.

On page 33, in section 602, beginning on line 19, Senators will notice this language:

> But such termination or refusal shall be limited to the particular political entity or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

Let me give an example of how this will work, and why the fear of the Senator from Tennessee is unfounded.

Let us assume that in a State of 100 counties, 99 of them are in compliance, and 1 county is discriminating in connection with a program which receives Federal assistance. Let us say, for the sake of simplicity, that each of those counties receives $1,000 from the Federal Government, and receives $1,000 in matching funds from the State government.

Under those circumstances, if one county discriminates, even though the entire $100,000 goes from the Federal Government into the State treasury, to be distributed, the Federal Government then gives $99,000 to the State government, but the State government cannot pass on any of that $99,000 to the county that is discriminating. Therefore, the great fear that has been in the mind of the Senator from Tennessee—namely, that innocent counties or innocent segments of the State would be hurt—will not apply, because only the one county that discriminates would be cut off from the Federal funds.

The Senator from Tennessee pointed out, and rightfully so, that State laws would be involved. When a State has passed a law which requires equal distribution on a county basis or on a per pupil basis, and if one county discriminates, the State law authorizing distribution of the Federal funds to that county will be in conflict with the Federal requirement of title VI that Federal funds may not be used to support discrimination. Therefore, the State would not have a right to give $1,000 of the Federal funds to that county.

The Senator from Tennessee pointed out that there may be an inconsistency between State law and Federal law. If that were the case, the Federal law would have to prevail, because where there is a conflict, the Federal law is supreme.

So it is not sufficient for a Governor to say that there is a State law, and that he must act under it, and that he cannot act under the Federal law, because if there is such a conflict, he is protected by the supremacy doctrine; and, under those circumstances, he would not have to pay out Federal funds to the offending county.

The language that has been written into the Dirksen-Mansfield substitute is safeguarding language, to make sure that innocent people do not suffer and to make certain that innocent segments of government do not suffer because of some action or some failure to act by one segment of government. To this extent, the Senator from Tennessee, by his persistence, and by calling his concerns to the attention of the Senate, has achieved much; and I believe that today title VI is better than it was when first proposed. For this the Senator from Tennessee is due great credit.

I believe there are ample safeguards here in the procedures of title VI. If we are to eliminate discrimination, if we are to agree that discrimination is unlawful, and discrimination is also unconstitutional, then there is no justification for the Federal Government continuing to pay Federal funds to any organ of government, any part of government, or any segment of government, that continues to discriminate.

Title VI implements these basic principles. It provides a fair and reasonable procedure for making sure that the Constitution is observed and for making sure that discrimination in the use of Federal funds is ended.

Mr. MORSE. Mr. President——

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

Mr. MORSE. I yield myself 3 minutes, Mr. President.

Some weeks before this measure was recommended by the White House last year, I introduced as a separate bill—what amounts to title VI of this bill. In my judgment it is an essential and vital part of this bill. It goes to the very heart of the constitutional problem that confronts the Senate in passing the civil rights bill—in short, the expenditure of Federal funds.

The expenditure of Federal funds upon a project that is based upon or involves racial discrimination is, in my judgment, unconstitutional; and we seek to bring to an end such unconstitutional administrative functioning by the agencies of the Government.

Mr. President, if title VI were deleted from this bill, all that would be left would be a 9-year-old, toothless ewe. And if we can imagine anything with little effectiveness, it would be a 9-year-old toothless ewe.

Mr. President, the teeth in this bill for the effective checking of the discriminations within the purview of the jurisdiction set forth in title VI, are so essential that I plead with the Senate not to vote to have the teeth taken out of the bill.

There has been much crying on the floor of the Senate that some innocent people may suffer as the result of ending the Federal contribution to a project that is segregated, but under which Federal benefits are received.

Mr. President, that cannot be helped. That happens to be one of the prices of freedom they must pay, too. These people have the same responsibility we all have of seeing that their local officials cease their discriminatory practices.

We cannot bring an end to racial discrimination if we are going to continue to pour millions of dollars of Federal tax money into project after project in which racial discrimination is practiced.

This puts it up to us to decide whether we intend to emasculate this bill, or pass a bill that really faces up to the constitutional question that confronts us today. There can no longer be any doubt that Federal funds spent for segregated programs are being spent illegally and contrary to the Constitution. It is the simple duty of Congress to put a stop to the expenditure of Federal funds for what amounts to unconstitutional programs, programs based upon segregation.

Mr. JAVITS. Mr. President, I yield myself 2 minutes.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized for 2 minutes.

Mr. JAVITS. I do not think any Senator has made more efforts, in terms of amendments to cut off Federal funds from State segregated programs, than I have or has any Senator had such amendments tabled more often. They have been tabled always on the claim that there will come a day when we shall have a general statute.

Here we have a general statute, and an eminently reasonable one.

If we vote to deny this measure of relief, we shall be voting contrary to the view of a man who never was a violent advocate of extreme civil rights measures, Mr. President. I refer to Dwight D. Eisenhower. The one thing he believed in was this program. I heard him stand on a platform in Harlem, the first time he ran, and say, "If there is one thing I am sure of about civil rights, it is that I won't have the taxpayers' money go to promoting segregation."

If we strike out this provision, we shall be acting in opposition to one of his most deeply held beliefs.

I do not agree with the Senator from Tennessee that there is any likelihood that the amendment would be applied

with respect to contracts or guarantees of insurance. It is tied to section 601 for its enforcement; and we know that a statute without provision for its enforcement is meaningless.

In the second place, it applies only to this particular activity.

In the third place, it cannot be put into effect unless a department shows that there is segregation, and even then only if the necessary order is filed with the Congressional committees; and then there must be a waiting period of 30 days; and then there must be opportunity for judicial review.

All this is eminently reasonable; and this amendment should be rejected.

The PRESIDING OFFICER. The time of the Senator from New York has expired.

Mr. PASTORE. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 3 minutes.

Mr. PASTORE. I say respectfully to the Members of the Senate that if we delete title VI, we commit a travesty upon the taxpayers of this country. The money being spent to support these programs belongs to all the people of the United States, without regard to whether they are white, black, brown, or any other color. So it would be absolutely unconstitutional to use Federal funds belonging to all the people of this country for a program in a State which was permitting discrimination based on race, color, or national origin. That would be a travesty upon the taxpayers of the Nation.

We must do what title VI provides; and we could do it in no milder form than that now provided by title VI.

The Senator from Tennessee says, "Let us read this title." I say so, too. When we read these two pages, we understand that the whole philosophy of title VI is to promote voluntary compliance. It is written right in the law. There shall be the voluntary compliance as the first step, and then the second step they must inaugurate and promulgate, rules that have a national effect, not a local effect. They shall apply to Tennessee, to Louisiana, to Rhode Island, in equal fashion.

Is that the end of it? Of course not. The rules must be approved by the President of the United States before they take effect.

And then is that the end? Of course not. There has to be a hearing. There has to be a bill of particulars. There has to be a finding made of discrimination.

Is that the end of it? Of course not. Even then there must be a report to the two pertinent committees of the Congress.

How far can you go to be fair in spending the people's money?

We had a situation, and I stated it for the RECORD, when we explained this title. A boy, a nonwhite, was brought to a hospital which was built with 50 percent of the taxpayers' money. The boy was denied admission to that hospital—in Greensboro. Why? Because he was not white. Do we want to spend the taxpayers' money to commit that kind of a travesty?

This is the reason why we have title VI in this bill, to protect the taxpayers' money, to make sure that here in America, where we collect taxes from all our people, we spend this money for the benefit of all of our people. That is all we are trying to do.

I repeat——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ROBERTSON. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 10 minutes.

Mr. ROBERTSON. Mr. President, if I thought I could change just one vote, I would undertake to speak louder than any who have proceeded me. [Laughter.]

This morning we took a vote, and found that there were fewer Members of this Senate for cloture than there were before we started 2 months of explaining the inequities of this bill.

Mr. President, while the vote this morning to impose cloture was not unexpected since 2 hours before it was taken, I wrote a friend in Richmond that we could not count on more than 29 votes against cloture, it nevertheless was to me a disappointing action because it means the passage by the Senate of the Dirksen substitute which, in my opinion, leaves in the bill many unconstitutional, as well as undesirable and unworkable features.

Title II of the bill, which is virtually unchanged, is clearly unconstitutional, whether you seek to justify it under the provisions of the due process clause of the 14th amendment or under the provisions of the commerce clause of the Constitution—stretch that clause as much as you will. Mr. President, I shall ask unanimous consent to have printed at the end of my remarks the detailed analysis of title II of the bill.

The big majority by which the Senate refused to take title VII out of the bill indicates a willingness, after the election next November, of course, for the businessmen of our Nation to be harassed in a very unfair and unjustified manner. I can find no consolation in the fact that this iniquitous program will at first apply to only those employing more than 100 workers because once the Senate has yielded to political pressure to write this principle into law, the same pressure groups will insist that the limit be reduced until it applies just to one employee. The same thing, of course, will apply to the limited jury trial amendment and to the mild changes incorporated in other provisions of the Dirksen substitute. Next year, we will have a demand to enact into law everything that was included in the original bill and that, of course, will include coverage of the Government insurance of mortgages and all home building loans made by any financial institution, the accounts of which are covered by Government insurance.

Students of the Philadelphia Constitutional Convention will recall that Thomas Jefferson, believing that no people could be capable of being both free and ignorant, asked his friend, James Madison, to include in the new Constitution a provision for a national university. The fight against that proposal was led by delegates from New England and it was overwhelmingly defeated. There has never since been any constitutional authority for the Federal Government to establish a national university or to support any university. Yet, section IV of the pending bill, provides unrestricted authority to help finance all universities, including church schools, and for the first time in our history to provide not just a scholarship but all college expenses, a subsistence allowance for the wife and all children of the student to be enrolled, and the payment to that student, if he has a job when he enrolls of an amount equal to his previous salary and if he had no previous salary he can be paid under provisions of another bill up to $75 per week. And, for what purpose? To train colored teachers to teach in white schools.

The distinguished Senator from Georgia, recalling, no doubt, the fate of democracies in Athens and in Rome, said that the history of democracies was that they ultimately committed suicide. Our representative democracy was established just 175 years ago. To those who may think that is a long period of time, let me remind them that the democracy of the city state of Athens lasted for 700 years. I repeat, Mr. President, the warning I gave the Senate last Monday from the dissenting opinion of Mr. Justice Brandeis in the Olmstead case:

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure, and satisfactions of life are to be found in the material things. They sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.
>
> Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repeal invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding.

With all due deference, Mr. President, to the good intentions of those who have urged the Senate to pass the pending bill and without amendments, I predict that the time will come when they will deeply regret their unwitting attack upon the American system of private enterprise within the framework of constitutional liberty.

Mr. President, I ask unanimous consent to have printed at the end of my remarks a detailed analysis of title II of the bill.

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

(See exhibit 1.)

Mr. ROBERTSON. For those who may be interested in title II, I point out that the analysis is a 186-page document. I intended to read it to the Senate, but

did not have the opportunity. So all I can do now is put it in the RECORD, where posterity may read it, and then wonder why we did such a foolish thing when all this information was available.

With all due deference to the good intentions of those who urge the Senate to pass the pending bill, and without amendment, I predict that the time will come when they will deeply regret this attack upon the American system of private enterprise within the framework of constitutional liberty.

How much time do I have left?

The PRESIDING OFFICER. The Senator has 4 more minutes.

Mr. ROBERTSON. I reserve those 4 minutes.

EXHIBIT 1

A CRITICAL ANALYSIS OF TITLE II OF H.R. 7152—THE PUBLIC ACCOMMODATIONS SECTION OF THE CIVIL RIGHTS ACT

INTRODUCTION

Title II of the pending bill is clearly unconstitutional. It would prohibit discrimination on account of race, color, religion or national origin in designated places of public accommodations. Three sources of Federal legislative powers in the Constitution have been proposed as authority for the enactment of such a force bill: the commerce clause (art. I, sec. 8(3)), the 13th amendment, and the 14th amendment. But only two of these sources, the commerce clause and the 14th amendment, have been actually cited as enacting authority for the bill now under consideration.

This proposal is fraught with grave danger not only because of the damage it would do to private property rights but likewise because of the precedent it would set for the reckless and uninhibited exercise of Federal power for purposes of political expediency. Never during my service in the Senate have I seen a bill so full of mischief as the proposed Federal public accommodations law now under consideration.

In its present form this title is devised to regulate the relations between a private businessman and the consumer public. But future bills could be aimed, with equal authority, at other areas of relations between individuals of an even more personal nature. And as a scheme of Federal preemption of business management prerogatives approaching virtual appropriation of private property without compensation, they are equally repugnant to the principles of a democratic form of government.

The underlying principle of title II is the principle of consolidation of Federal power. Its enactment would be a move toward the centralization of power that was so much dreaded by our forefathers.

ANALYSIS OF TITLE II OF H.R. 7152—RIGHTS DECLARED

Subsection 201(a) of H.R. 7152 provides that "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."

In addition, section 202 declares that "All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule or order, of a State or any agency or political subdivision thereof."

CATEGORIES OF SUBJECT ESTABLISHMENTS

Four categories of establishments are made subject to the mandate of subsection 201(a). They are set out in subsection 201(b) as follows:

(1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) Any restaurant, cafeteria, lunch room, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including but not limited to, any such facility located on the premises, of any retail establishment; or any gasoline station;

(3) Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) Any establishment (A) which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

And according to subsection 201(b), a yoke of servitude would be imposed upon the operator of any of the specified establishments if either one of the following conditions apply:

(1) Its operations affect commerce or (2) discrimination or segregation by it is supported by State action.

AFFECT COMMERCE DEFINED

Subsection 201(c) declares that the operations of an establishment affect commerce within the meaning of this title if:

(a) It is a hotel, motel, or similar establishment defined in category (1);

(b) It is a restaurant, lunch counter, or similar establishment or a gasoline station designated in category (2) and (A) serves or offers to serve interstate travelers or (B) a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; or

(c) It is a motion picture house, theater, or other place of entertainment within category (3) which customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; or

(d) It is an establishment described in category (4) and it is physically located within the premises of, or there is physically located within its premises, an the meaning of (a), (b), or (c).

STATE ACTION DEFINED

Subsection 201(d) declares that "Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation—

(1) Is carried on under color of any law, statute, ordinance or regulation; or

(2) Is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or

(3) Is required by action of a State or political subdivision thereof.

PRIVATE CLUB EXCLUSION

Subsection 201(e) provides that "The provisions of this title shall not apply to a bona fide private club or other establishment not open to the public, except to the extent that the facilities of such establishment are made available to customers or patrons of an establishment within the scope of subsection (201 (b))."

DEPRIVATION OF RIGHT PROHIBITED

Section 203 provides that no one shall deprive or attempt to deprive any person of any right or privilege secured by sections 201 to 202, or interfere or attempt to interfere with any such right or privilege.

INJUNCTIVE RELIEF AUTHORIZED

Subsection 204(a) authorizes any person aggrieved, or the Attorney General, if the latter is satisfied that the purposes of this title will be materially furthered, to institute an action for injunctive relief for violations of section 203.

SIMILARITY TO CIVIL RIGHTS ACT OF 1875

Title II is intended "to provide injunctive relief against discrimination in public accommodations." The Civil Rights Act of 1875 was an "act to protect all citizens in their civil and legal rights."

Subsection 201(a) of title II of H.R. 7152 is almost identical to the first section of the 1875 act. Subsection 201(a) provides that "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."

"Place of public accommodation" is defined to include inns (category (1)), theaters and other places of entertainment (category (3)) in subsection 201(b).

Section 1 of the Civil Rights Act of 1875 provided that "All persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude."

The second section of the act provided for both civil liability and criminal penalties against persons violating section 1.

CIVIL RIGHTS CASES

Five cases predicated upon violations of section 1 of the Civil Rights Act of 1875 were considered by the Supreme Court of the United States in a consolidated opinion under the title of the *Civil Rights Cases*, 109 U.S. 3 (1883).

Two of the cases involved indictments for denying to persons of color the accommodations and privileges of an inn or hotel; two were brought for the denial to such individuals of the privileges and accommodations of a theater; and the fifth, a civil action, for the denial of the enjoyment of the accommodations and privileges of a railroad car.

Sections 1 and 2 of the Civil Rights Act of 1875 were held to be unconstitutional and void. One Justice dissented from this holding.

MAJORITY OPINION—THE 14TH AMENDMENT

The majority of the Court first directed its attention to the question of whether the power conferred upon the Congress by the 14th amendment included the authority to take such "immediate and absolute possession of the subject of the right of admission to inns, public conveyances, and places of amusement." (Id. at 19.)

The limits of the conduct prohibited under the 14th amendment were set forth as follows: "It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not be a mere brutum fulmen, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the

prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it." (Id. at 11.)

The majority also stated that legislation enacted under the authority of the 14th amendment "should be adapted to the mischief and wrong which the amendment was intended to provide against: and that is, State laws, or State action of some kind, adverse to the rights of the citizen secured by the amendment. Such legislation cannot properly cover the whole domain of rights appertaining to life, liberty, and property, defining them and providing for their vindication. That would be to establish a code of municipal law regulative of all private rights between man and man in society. It would be to make Congress take the place of the State legislatures and to supersede them." (Id. at 13.)

The majority went on to say that the Civil Rights Act of 1875 "steps into the domain of local jurisprudence, and lays down rules for the conduct of individuals in society toward each other, and imposes sanctions for the enforcement of those rules, without referring in any manner to any supposed action of the State or its authorities.

"If this legislation is appropriate for enforcing the prohibitions of the amendment, it is difficult to see where it is to stop. Why may not Congress with equal show of authority enact a code of laws for the enforcement and vindication of all rights of life, liberty, and property?" (Id. at 14.)

It was subsequently declared that "it is proper to state that civil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property, or his reputation; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress." (Id. at 17.)

THE 13TH AMENDMENT

The majority then proceeded to discuss the authority of Congress under the 13th amendment. It stated that "The only question under the (13th amendment), therefore, is whether the refusal to any persons of the accommodations of an inn, or a public conveyance, or a place of public amusement, by an individual, and without any sanction or support from any State law or regulation, does inflict upon such persons any manner of servitude, or form of slavery, as those terms are understood in this country?" (Id. at 23.)

They answered this question in the negative. They declared that they were "forced to the conclusion that such an act of refusal has nothing to do with slavery or involuntary servitude, and that if it is violative of any right of the party, his redress is to be sought under the laws of the State; or if those laws are adverse to his rights and do not protect him, his remedy will be found in the corrective legislation which Congress has adopted, or may adopt, for counteracting the effect of State laws, State action, prohibited by the 14th amendment. It would be running the slavery argument into the ground to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain, or as to the people he will take into his coach or cab or car, or admit to his concert or theater, or deal with in other matters of intercourse or business." (Id. at 24–25.)

The majority stated further: "When a man has emerged from slavery, and by the aid of beneficial legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected. There were thousands of free colored people in this country before the abolition of slavery, enjoying all the essential rights of life, liberty, and property the same as white citizens; yet no one, at that time, thought that it was any invasion of his personal status as a freeman because he was not admitted to all the privileges enjoyed by white citizens, or because he was subjected to discriminations in the enjoyment of accommodations in inns, public conveyances, and places of amusement. Mere discriminations on account of race or color were not regarded as badges of slavery." (Id. at 25.)

CONCLUSION

The majority concluded its opinion with the statement that "On the whole we are of opinion, that no countenance of authority for the passage of the law in question can be found in either the 13th or 14th amendment of the Constitution; and no other ground of authority for its passage being suggested, it must necessarily be declared void, at least so far as its operation in the several States is concerned." (Id. at 25.)

MR. JUSTICE HARLAN'S DISSENT

Mr. Justice Harlan asserted that his associates had adjudged erroneously that "Congress is without power, under either the 13th or 14th amendment, to establish such regulations, and that the first and second sections of the statute are, in all their parts, unconstitutional and void." (Id. at 27.)

He was very explicit in his contention that the majority had not given due deference to the adoptive intent of these two amendments in arriving at their decision. (Id. at 26.)

"The opinion in these cases proceeds, it seems to me, upon grounds entirely too narrow and artificial. I cannot resist the conclusion that the substance and spirit of the recent amendments of the Constitution have been sacrificed by a subtle and ingenious verbal criticism. * * * By this I do not mean that the determination of these cases should have been materially controlled by considerations of mere expediency or policy. I mean only, in this form, to express an earnest conviction that the court has departed from the familiar rule requiring, in the interpretation of constitutional provisions, that full effect be given to the intent with which they were adopted." (Id. at 26.)

Prior to his discussion of the language and scope of these amendments, he sought to "recall the relations subsisting, prior to their adoption, between the National Government and the institution of slavery, as indicated by the provisions of the Constitution, the legislation of Congress, and decisions of this court." (Id. at 28.)

THIRTEENTH AMENDMENT

He then sought to ascertain the reach of congressional power under the authority of the 13th amendment. According to his understanding of the meaning and purpose of this amendment, the freedom acquired by those previously held in bondage "necessarily involved immunity from, and protection against, all discrimination against them, because of their race, of any civil rights as belong to freemen of other races. Congress, therefore, under its express power to enforce that amendment, by appropriate legislation, may enact laws to protect that people against the deprivation, because of their race, of any civil rights granted to other freemen in the same State; and such legislation may be of direct and primary character, operating upon States, their officers and agents, and also, upon, at least, such individuals and corporations as exercise public functions and wield power and authority under the State." (Id. at 36.) It was his opinion that the power of the Congress under the 13th amendment was not necessarily restricted to legislation by positive law, as an institution upheld by positive law, "but may be exerted to the extent, at least, of protecting the liberated race against discrimination, in respect of legal rights belonging to freemen, where such discrimination exists." (Id. at 37.)

He next surveyed what he deemed to be the rights of colored persons regarding the "accommodations, privileges and facilities of public conveyances, inns and places of public amusement." (Id. at 37–43.) He found each of these places to be clothed with a public interest and/or to be exercising public or quasi-functions. He felt, therefore, that all persons should have equal access to the use of these facilities without regard to race or color. Such discrimination by any of these enterprises would constitute the imposition of a badge of servitude on colored people. In his opinion it would be an act whose prevention was within the purview of the power of Congress to enforce the 13th amendment without reference to an enlarged congressional power under the later 14th amendment. (Id. at 43.)

FOURTEENTH AMENDMENT

Mr. Justice Harlan then proceeded to consider the cases with reference to the power Congress acquired upon the adoption of the 14th amendment. Id. at 43–60. He claimed that the majority's assumption that the amendment consisted wholly of prohibitions upon State laws and State proceedings was unauthorized by the amendment's language. (Id. at 46.)

The Justice's next inquiry was into the rights, privileges and immunities that were acquired by colored race when they were granted State citizenship. He found them to be "those which are fundamental in citizenship in a free republican government, such as are 'common to the citizens in the latter States under their constitutions and laws by virtue of their being citizens.'" (Id. at 17.)

He identified one of these "rights, privileges, or immunities" to be the "exemption from race discrimination in respect of any civil right belonging to citizens of the white race in the same State." *Civil Rights Cases, supra,* 48. And as he stated earlier, this exemption should apply with respect to the accommodations, privileges and facilities of public conveyances, inns and places of public amusement. (Id. at 37–43.)

He raised the question that "if, then, exemption from discrimination, in respect of civil rights, is a new constitutional right, secured by the grant of State citizenship to colored citizens of the United States—and I do not see how this can now be questioned—why may not the Nation, by means of its own legislation of a primary direct character, guard, protect, and enforce that right?" (Id. at 50.)

The fact that the States were expressly forbidden from making or enforcing laws abridging the privileges and immunities of citizens of the United States should not furnish sufficient reason for holding that the amendment was intended to preclude the Congress from prohibiting all discrimination, in respect of their rights as citizens, based on race, color, or previous condition of servitude. (Id. at 54.)

Mr. Justice Harlan contended further that even if the reach of congressional power extended only to State law and State action, the decision of the majority was still erroneous. In his opinion, there had been State

action within the 14th amendment as previously interpreted by the Court. (Id. at 57.) He predicated this contention on his earlier interpretation of the public nature of railroads, inns, and places of public amusement. (Id. at 37–43.)

Mr. Justice Harlan then passed on to take issue with the majority for not considering the question "whether Congress, in the exercise of its power to regulate commerce amongst the several States, might or might not pass a law regulating rights in public conveyances passing from one State to another?" (Id. at 60.)

Mr. Justice Harlan asserted this question might become a pertinent inquiry for the Court even if it were true that such legislation would be an interference with the social right of the people. (Id. at 61.)

It is clear, however, that the majority gave the question of power under the commerce clause sufficient consideration to dismiss it as a serious argument in the following language:

"Has Congress constitutional power to make such a law? Of course, no one will contend that the power to pass it was contained in the Constitution before the adoption of the last three amendments." (Id. at 10.)

The commerce clause was, of course, an integral part of the Constitution at that time, and questions concerning its proper construction had been argued many times at the bar of the Supreme Court. While this language of the majority is dictum, it is powerful language indeed, when the Court states that "of course, no one will contend" that the commerce clause would vest Congress with authority for enactment of civil rights legislation affecting private property.

SUMMARY OF MAJORITY AND DISSENTING OPINIONS IN CIVIL RIGHTS CASES

The acts complained of in the Civil Rights Cases, supra, were the denials to colored people of access to the accommodations of inns or hotels, a railroad passengar car, and theaters. The adoptive intent of the 13th amendment and the 14th amendment regarding such discrimination was the focal point of both the majority opinion and Mr. Justice Harlan's lone dissenting opinion. These opinions were written 13 years after the adoption of the 13th amendment and 15 years after the adoption of the 14th amendment.

The majority concluded that the acts of refusal did not inflict any manner of involuntary servitude or form of slavery "as those terms are understood in this country" whose prevention would therefore be within the powers of Congress under the 13th amendment. (Id. at 23–25.)

Mr. Justice Harlan contended that the acts of refusal were a badge of servitude whose imposition the Congress could prevent under its power to enforce the 13th amendment. (Id. at 43.)

The majority held that the 14th amendment prohibited discriminatory State laws and State acts; but that individual invasion of individual rights was not the subject matter of the amendment.

Mr. Justice Harlan contended that this interpretation was unauthorized by the amendment's language. He asserted that it was to be presumed that the amendment was intended to clothe the Congress with the power to reach discrimination by corporations and individuals in the States as well. (Id. at 46, 54.)

The majority did not find that the acts of discrimination complained of were either sanctioned in any way by the State or supported by State authority in the shape of laws, customs, or judicial or executive proceedings. (Id. at 13.)

Mr. Justice Harlan contended that the acts of discrimination did involve adverse State action within the meaning of the 14th amendment. He charged that railroad corporations, keepers of inns, and managers of places of public amusement were agents or instrumentalities of the State because they were charged with duties to the public and therefore were subject to regulation under the 14th amendment. (Id. at 57–59.)

The majority did not pass on the question whether a right to enjoy equal accommodations and privileges in all inns, public conveyances, and places of public amusement was one of the privileges and immunities of a citizen of the United States. Such an examination was not necessary since the majority rendered its decision regarding the reach of the 14th amendment on the assumption that such a privilege was an essential right of a citizen within the meaning of the amendment. (Id. at 19.)

Mr. Justice Harlan argued that such a right did exist. (Id. at 37–43.)

The majority summarily passed by the question of whether the Congress, in the exercise of its power to regulate commerce amongst the several States, might or might not pass a law prohibiting discrimination in public conveyances passing from one State to another. (Id. at 19.)

Mr. Justice Harlan suggested that this precise question was substantially presented in the case involving the railroad company (*Robinson & Wife* v. *Memphis and Charleston Railroad Co.*) and that the Court could have dealt extensively with the question. (Id. at 60–61.)

ISSUE REGARDING AUTHORITY UNDER THE COMMERCE CLAUSE

The issue of whether or not the Congress could under the commerce clause prohibit discrimination on account of race or color in the operations of common carriers has been resolved in the dissenting Justice's favor. For it is now accepted that Congress can properly enact such legislation under that clause. There has been no such affirmative resolution of this issue regarding similar laws intending to affect the operations of inns and theaters—and the other establishments designated in subsection 201(b) of H.R. 7152.

POSSIBILITY OF CIVIL RIGHTS CASES BEING OVERRIDDEN

The Supreme Court of the United States, with one Justice dissenting, flatly declared in 1883 that "no countenance of authority for the passage of the law [sections 1 and 2 of the Civil Rights Act of 1875] can be found in either the 13th or 14th amendment of the Constitution; and no other ground of authority for its passage being suggested, [it] must be declared void, at least so far as [its] operation in the several States is concerned." Civil Rights cases, supra, 25.

Yet title II of H.R. 7152—with its basic provision (subsection 201(a)) practically identical to that of the unconstitutional section of the Civil Rights Act of 1875—is now held out not only as a proper exercise of the power of the Congress under the commerce clause but also as a legitimate exercise of congressional power under the 14th amendment deriving additional support from the 13th amendment. (CONGRESSIONAL RECORD, page 1522, Jan. 31, 1964.)

In testifying in support of title II of H.R. 7152, the Attorney General of the United States acknowledged that "in the *Civil Rights Cases*, 109 U.S. 3 (1883), the Supreme Court held that the powers of the Congress under the 14th amendment did not extend to the elimination of discrimination per se in privately owned places of public accommodation." (Hearings on civil rights before Subcommittee No. 5 of the House Committee on the Judiciary, 88th Cong., 1st sess., serial No. 4, 1376 (1963).)

He then noted that "since the decision in that case, a vast change has occurred both in the character of business organization and in the concept of what constitutes State action. Today, business enterprises are regulated and licensed to a much greater degree than in 1883." (Ibid.)

The Attorney General felt that "the present vitality of the decision in the Civil Rights cases is open to serious question." (Ibid.) But because that decision has not been overruled, it would be "the proper course for title II to rely primarily upon the commerce clause." (Ibid.)

The Attorney General also stated that perhaps Mr. Justice Harlan's dissent in the Civil Rights cases "would be accepted as the majority opinion at the present time." Hearings, supra, 1338. He reiterated this position when he appeared before a Senate committee by stating that "if the Supreme Court were now asked to pass upon the constitutionality of a public accommodations law based on the 14th amendment, it might well uphold the law." (Hearings on S. 1732 before the Senate Committee on Commerce, 88th Cong., 1st sess., 23 (1963).)

He stated further that he was "not sure that it wouldn't be better, if you are going to put it under something other than the commerce clause, to put it under the 13th amendment rather than the 14th amendment.

"The 13th amendment might very well be stronger than the 14th amendment." (Id. at 74.)

INVALIDITY OF MR. JUSTICE HARLAN'S DISSENT

Mr. Justice Harlan's position in the civil rights cases as to congressional power under the 13th and 14th amendments has been rightfully depicted as resting "upon a misreading of language and of legislative history which, if adopted as the proper technique, would confuse and stultify the interpretative process." (Westin, John Marshall Harlan, 66 Yale L.J. 637, 705 (1957).)

LEGISLATIVE HISTORY OF THE 13TH AMENDMENT

The debate on the joint resolution proposing the 13th amendment (S.J. Res. 16, 38th Cong., 1st sess. (1864))—in both the Senate and the House of Representatives—centered on the history and the nature of slavery, the property rights of slave owners, the legality of abolishing slavery by an amendment to the Constitution, the expediency of abolishing slavery by this method, and the appropriate time to abolish slavery. The proponents of the measure confined themselves almost entirely to a forceful exposition of their general objective to eliminate forever the institution of slavery from the American scene. Very little discussion was devoted to defining precisely just what rights and privileges would be inherent in the 13th amendment. The debates in both Houses of the Congress reflected a very clear understanding that the amendment was intended to be only a very limited source of rights for ex-slaves and their descendants.

THE 13TH AMENDMENT BEFORE THE SENATE

The 13th amendment as adopted was an article contained in a substitute joint resolution reported out by the Senate Committee on the Judiciary in place of the original resolution (S.J. Res. 16, 38th Cong., 1st sess. (1864)) introduced by Senator John B. Henderson of Missouri. Senator Henderson's proposed amendment contained two articles as follows:

"Article 1. Slavery or involuntary servitude, except as a punishment for crime, shall not exist in the United States.

"Article 2. The Congress, whenever a majority of the members elected to each House shall deem it necessary, may propose amendments to the Constitution, or, on the application of the Legislatures of a majority of the several States, shall call a convention for proposing amendments, which in either case shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the Legislatures of two-thirds of the several States, or by conventions in two-thirds thereof, as the one or the other mode

of ratification may be proposed by Congress." (Congressional Globe, 38th Cong., 1st sess., 1313 (Mar. 28, 1864).)

The amendment in the form of a substitute resolution proposed by the Senate Committee on the Judiciary contained the following single article:

Article XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation." (Congressional Globe, 38th Cong., 1st sess., 1313 (Mar. 28, 1864).)

Senator Henry Wilson, a Senator from Massachusetts, was an earnest advocate of the proposed amendment. He set forth his understanding of the intended effects of the amendment as follows: "it will obliterate the last lingering vestiges of the slave system; its chattelizing, degrading and bloody codes; its dark, malignant, barbarizing spirit; all it was and is, everything connected with it or pertaining to it, from the face of the Nation it has scarred with moral desolation, from the bosom of the country it has reddened with the blood and strewn with the graves of patriotism. The incorporation of this amendment into the organic law of the Nation will make impossible forevermore the reappearing of the discarded slave system, and the returning of the despotism of the slavemasters' domination." (Congressional Globe, 38th Cong., 1st sess., 1324 (Mar. 28, 1864).)

Senator James Harlan of Iowa spoke in support of the proposal to make slavery unlawful. During the course of his remarks, he listed the following "necessary incidents of slavery": "the abolition of 'the conjugal relation' * * * the abolition practically of the parental relation, robbing the offspring of the care and attention of his parents * * * the abolition of 'the relation of person to property. It declares the slave incapable of acquiring and holding property' * * * the deprivation of a status in court to all those held to be slaves * * * the suppression of the freedom of speech and of press, not only among those downtrodden people themselves but among the white race * * * preclusion of 'the practical possibility of maintaining schools for the education of those of the white race who have not the means to provide for their own mental culture'." (Congressional Globe, 38th Cong., 1st sess., 1439 (Apr. 6, 1864).)

But he did not give any indication that he considered the denial of equal access to the accommodations and facilities of inns, public conveyances, and places of amusement to ex-slaves and their descendants to be a burden or disability constituting a badge of slavery and servitude.

Senator John B. Henderson of Missouri, the introducer of the original proposed amendment, maintained that the existence of slavery "condemn(ed) 4 million blacks to eternal servitude, in which the alphabet, the Bible, and the wages of labor are denied them." (Id. at 1462.) He subsequently declared that "in passing this amendment we do not confer upon the Negro the right to vote. We give him no right except his freedom and leave the rest to the States." (Id. at 1465.)

The statements of this supporter of the amendment did not in any fashion reflect any understanding that the amendment was intended to confer a right of equal access to the accommodations and facilities of inns, public conveyances, and places of amusement upon ex-slaves and their descendants.

Senator Charles Sumner, of Massachusetts, moved to amend the reported resolution by striking out the words of the proposed article and inserting the following:

"All persons are equal before the law, so that no person can hold another as a slave; and the Congress may make all laws necessary and proper to carry this article into effect everywhere within the United States and the jurisdiction thereof." (Id. at 1483.)

Senator Sumner stated that "the distinctive words in this clause assert the equality of all persons before the law." (Id. at 1482.) He described the language as "already well known in history" and he cited certain basic documents of the Government of France as his authority. These documents included the Declaration of Rights prefacing the Constitution of September 1791; the Constitution of June 1793; and the constitutional charter of August 1830. He also noted that similar articles had been adopted in the charters of Belgium, Italy, and Greece. (Id. at 1482–1483.)

The chairman of the Committee on the Judiciary, Senator Lyman Trumbull, of Illinois, declared that he was not at all sure that the language suggested by Senator Sumner were the best words to be adopted. He said:

"I think there is nothing historical about them, nothing in the source from whence they came to commend them particularly to us. I would not go to the French Revolution to find the proper words for a constitution. We all know that their constitutions were failures, while ours, we trust, will be permanent. I therefore am not inclined to accept the gentleman's suggestions, and I hope that he will withdraw them and let the Senate come to a vote upon this subject." (Id. at 1488.)

Having stated his objections to the language proposed by Senator Sumner, Senator Trumbull declared that the object he had in view was "to abolish slavery and prevent its existence hereafter." (Ibid.)

Upon the conclusion of Senator Trumbull's remarks, Senator Jacob M. Howard of Michigan arose to discuss the language suggested by Senator Sumner. Senator Sumner stated that he was withdrawing his amendment but Senator Howard objected on the ground that he had the floor and that he wanted to speak "to the subject of the amendment offered by the Senator from Massachusetts." (Ibid.)

There was some confusion caused by the amendment being reported by the Secretary to read that "All persons are free before the law." Senator Sumner stated it was supposed to be "equal" and not "free." Senator Howard answered that it was very immaterial as to which word was used because "in a legal and technical sense that language is utterly insignificant and meaningless as a clause of the Constitution." (Ibid.) Senator Howard insisted that Senator Sumner had made a very radical mistake in the latter's interpretation of that language in the French Constitution and that that language was not intended to be construed as an eliminator of slavery. Senator Howard declared that "The purpose for which this language was used in the original Constitution of the French Republic of 1791, was to abolish nobility and privileged classes. It was a mere political reformation relating to the political rights of Frenchmen and nothing else. It was to enable all Frenchmen to reach positions of eminence and honor in the French Government, and was intended for no other purpose whatever. It was never intended there as a means of abolishing slavery at all. The convention of 1794 abolished slavery by another and separate decree expressly putting an end to slavery within the dominions of the French Republic and all its colonies." (Id. at 1489.)

Senator Howard here expressly disapproved language which he held to have been used to "abolish nobility and privileged classes"—i.e., to establish equality of opportunity in the exercise of political rights. He drew a precise distinction between this purpose of the French documents and his understanding of the purpose of the proposed amendment. The abolition of slavery was not to be equated with equal opportunity in political rights.

Senator Howard stated that he was as desirous as the Senator from Massachusetts to use significant language that could not be mistaken or misunderstood as to its intended effect. But he preferred to "dismiss all reference to French constitutions or French codes, and go back to the good old Anglo-Saxon language employed by our fathers in the ordinance of 1787, an expression which has been adjudicated upon repeatedly, which is perfectly well understood both by the public and by judicial tribunals, a phrase, I may say further, which is peculiarly near and dear to the people of the Northwestern Territory, from whose soil slavery was excluded by it. I think it is well understood, well comprehended by the people of the United States, and that no court of justice, no magistrate, no person, old or young, can misapprehend the meaning and effect of that clear, brief and comprehensive clause. I hope that we shall stand by the report of the committee." (Id. at 1489.)

That "old Anglo-Saxon language" in the Northwest Ordinance provided that "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided always*, That any person escaping into the same, from labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid." (Ordinance for the Government of the Territory of the United States Northwest of the River Ohio, art. VI, H. Doc. No. 398 69th Cong., 1st sess. 54 (1927).)

"It was universally understood that article VI [of the Northwest Ordinance] did not confer any political or civil rights on Negroes. The free Negro's status in the Northwest was only slightly better than that of a slave. He was obliged to exist on the fringe of settlements, denied access to schools, the courts, and the polls, and regulated by the Black Codes taken from the statute books of slaveholding States. (Hamilton, The Legislative and Judicial History of the 13th Amendment, 9 Nat'l B.J. 26, 52 (1951)" Westin, supra, 703.)

At the conclusion of Senator Howard's remarks, Senator Sumner arose to declare that "My proposition is withdrawn, the Chair understands." (Congressional Globe, 38th Cong., 1st sess. 1489 (1864).)

Upon the rejection of a proposed substitute for the whole committee resolution, the Senate proceeded to pass that resolution by a 38–6 vote. (Id. at 1490.)

THE 13TH AMENDMENT BEFORE THE HOUSE OF REPRESENTATIVES

The proposed amendment was considered twice by the House of Representatives. It failed of passage in the 1st session of the 38th Congress. (Congressional Globe, 38th Cong., 1st sess. 2995 (June 15, 1864).) But is received the necessary two-thirds approval during the second session of that Congress. (Id. 38th Cong., 2d sess. 531 (Jan. 31, 1865).) The debates in the House of Representatives followed the course set by the Senate in its deliberations.

One proponent of the proposed amendment, Representative Ebon C. Ingersoll, from Illinois, was very explicit in his interpretation of what would be inherent in the freedom that the amendment would bestow upon ex-slaves and their descendants. He declared that "Sir, I am in favor of the fullest sense of personal liberty. I am in favor of the freedom of speech * * * and if this proposed amendment to the Constitution is adopted and ratified, the day is not far dis-

tant when this glorious privilege will be accorded to every citizen of the Republic. I am in favor of the adoption of this amendment because it will secure to the oppressed slave his natural and God-given rights. I believe that the black man has certain inalienable rights, which are as sacred in the sight of Heaven as those of any other race. I believe he has a right to live, and live in a state of freedom. He has a right to breathe the free air and enjoy God's free sunshine. He has a right to till the soil, to earn his bread by the sweat of his brow, and enjoy the rewards of his own labor. He has a right to the endearments and enjoyment of family ties; and no white man has any right to rob him of or infringe upon any of these blessings." (Congressional Globe, 38th Cong., 2d sess. 1990 (June 16, 1864).)

The right to equal access to the accommodations and facilities of inns, public conveyances and places of public amusement is not akin to any of the rights enumerated by this proponent of the proposed amendment.

Elijah Ward, a Representative from New York, and an opponent of the proposed amendment, construed the amendment to mean that "all persons shall be equal before the law, without regard to color, and so that no person shall hereafter be held in bondage." (Congressional Globe, 38th Cong., 2d sess. 177 (Jan. 9, 1865).)

Robert Mallory, a Representative from Kentucky and an opponent of the proposed amendment, posed a series of questions which give some insight to his interpretation of the possible effects of the ratification of the amendment. These questions were: "What does the gentleman propose to do with the Negroes if they be liberated by this constitutional amendment? Does my colleague hold that they should remain in the States in which they may be when freed? Sir, I know hundreds of the Republican Party—or I did know hundreds of them in former times; I do not know what their opinions may be now—who were bitterly opposed to this policy; who would have fought to the bitter end against setting free the Negroes to remain in the States where they were freed, and to control the destinies of this Government by the exercise of the elective franchise, maintaining an equality with the white man, socially, civilly, politically. Do they entertain that opinion now? Does my colleague entertain it? Is he, are they, now in favor of the Negro remaining when freed in the States where freed, enjoying the right of suffrage, politically equal to the white man?" (Congressional Globe, 38th Cong., 2d sess. 179 (Jan. 9, 1865).)

There was no immediate response either from his colleague, George M. Yeaman, of Kentucky, to whom the queries had been put or from any other Representative.

A proponent, John F. Farnsworth, of Illinois, subsequently commented on the proposal as follows:

"What is that we now propose to do? We propose to say in the organic law of the land that there shall be no more involuntary servitude except as a punishment for crime." (Congressional Globe, 38th Cong., 2d sess. 200 (Jan. 10, 1865).)

"When this usage of slavery is abolished and we have ceased to be familiarized with the clank of chains, then we shall look upon the thing with the horror it deserves." Id. at 201.

He addressed himself to the objection to the proposed amendment it would enfranchise the Negro. He declared: "I defy the conclusion; but I should not be deterred from the move, even if it were correct. A recognition of natural rights is one thing, a grant of political franchise is quite another. We extend to all white men the protection of the law when they land upon our shores. We grant them political rights when they comply with the conditions which those laws prescribe. If political rights must necessarily follow the possession of personal liberty, then all but male citizens in our country are slaves. This illustration alone reduces the conclusion to an absurdity. * * * Conscious as I am that the best interests of the country and posterity require a mitigation of the evils with which slavery has afflicted this war-desolated and strife-torn land, I will not suffer myself to be prevented from giving my aid to this beneficient proposition by any imaginary evils that it may not provide for." (Congressional Globe, 38th Cong., 2d sess. 202 (Jan. 11, 1865).)

Representative Farnsworth recognized as an "imaginary evil" the possibility of the enfranchisement of ex-slaves and their descendants as a result of the ratification of the amendment. Both the tenor and the substance of his remarks suggest that he would have considered equally imaginary the possibility that the amendment would authorize the imposition of a duty to serve ex-slaves and their descendants upon the owners and operators of inns, public conveyances, and places of public amusement.

In the course of ratification the legislatures of three States conditioned their approval of the amendment on the express understanding that it would be a very limited source of power to the Congress on the one hand and an equally restricted source of rights to ex-slaves and their descendants. These States were Alabama, Florida, and South Carolina.

The General Assembly of the State of Alabama stipulated in its resolution of ratification that "this amendment to the Constitution of the United States, is adopted by the Legislature of the State of Alabama with the understanding that it does not confer upon the Congress, the power to legislate upon the political status of the Freedmen in this State." (H. Doc. No. 529, 56th Cong., 2d sess. (1894), "Documentary History of the Constitution of the United States," vol. II, 609–610.)

The General Assembly of the State of Florida provided in its resolution of ratification that "be it further resolved that this amendment to the Constitution of the United States, is adopted by the Legislature of the State of Florida with the understanding that it does not confer upon the Congress the power to legislate upon the political status of the Freedmen in this State." (Id. at 624–626.)

The General Assembly of the State of South Carolina declared in its resolution of ratification that "any attempt by Congress toward legislating upon the political status of former slaves, or their civil relations, would be contrary to the Constitution of the United States, as it now is, or as it would be altered by the proposed amendment—in conflict with the policy of the President declared in his amnesty declaration and with the restoration of that harmony upon which depends the vital interests of the American Union." (Id. at 605–606.)

SUMMARY

The intent of the framers of the 13th amendment was a subject of frequent discussion during the first session of the 39th Congress. These discussions took place during the debates on various proposals to specify and to secure to ex-slaves the "fundamental rights of citizenship." (See, generally, debates on S. 60, S. 61, and H.R. 613, 39th Cong., 1st sess., in the Congressional Globe.) Such rights were asserted to include " 'The right to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, and to be subject to like punishment, pains, and penalties, and to none other.' " (Congressional Globe, 39th Cong., 1st sess., 1151 and see Civil Rights Act of April 9, 1866, 14 Stat. 27, sec. 1 (42 U.S.C. secs. 1981, 1982 (1958).)

The debates swirled around the issue of whether the 13th amendment was proper authority for securing the cited rights to ex-slaves and their descendants. The records of these debates are barren of any grounds for concluding that the right of Negroes to require their being served in private business establishments was one of the rights to be so secured by the adoption of the 13th amendment.

The legislative history of the 13th amendment lends no support to the contention that the authority of that amendment could be invoked by the Congress to prohibit segregation on account of race or color in private business establishments.

LEGISLATIVE HISTORY OF THE 14TH AMENDMENT

The infirmity in Mr. Justice Harlan's position on the scope of congressional power under the 14th amendment has been described as follows:

"Harlan argued that the citizenship sentence of the 14th amendment gave Congress, under the grant of enforcement power in section 5, the authority to forbid private acts of discrimination. The difficulty with his position is that it runs counter to the legislative history and the language of section 1, not in the sense that Harlan supported a broad but true reading as against an 'artificial' and 'overnarrow' one, but in the sense that Harlan's view misconstrued what the real content of the 14th amendment was. In the early stages of congressional debate over the proposed amendment, the Joint Committee on Reconstruction reported to the House a draft written by Representative John Bingham which would have given Congress power to make all laws necessary and proper 'to secure to the citizens in the several States, and to all persons in the several States equal protection in the rights of life, liberty, and property.' Representative Bingham and several other Republicans defended this proposal as doing nothing more than restating various guarantees already in the Constitution, citing article IV, section 2 and the fifth amendment; the amendment would add, they said, 'the express grant of power upon the Congress' to enforce the guarantees. This immediately drew attacks from moderate and radical Republicans, as well as a Democratic spokesman, all objecting to the draft as giving too much power to Congress.

"In the most carefully reasoned speech of the debates, Republican Robert Hale of New York warned his colleagues: 'It is not a mere provision that when the States undertake to give protection which is unequal Congress may equalize it; it is a grant of power in general terms—a grant of the right to legislate for the protection of life, liberty, and property, simply qualified with the condition that it shall be equal legislation.'

"This, Hale felt, would be 'an utter departure from every principle ever dreamed of by the men who framed our Constitution.' When questioned directly by Hale as to whether this was the effect of his draft, Bingham hedged back and forth but admitted, 'I believe it does in regard to life and liberty and property.' On that ground, Roscoe Conkling rose to table the Bingham draft, saying that he had opposed the idea in committee and opposed it now. Bingham's proposal was tabled and it was never presented to the House or the Senate again. When the successor draft of the 14th amendment, framed in terms of 'no state,' was debated, none of the critics of the Bingham proposal attacked the provision as being the same concept in disguise, a position men like Hale and certainly Rogers would have been quick to assert if the adopted draft had been so understood in Congress.

"As to citizenship, a sentence was added to the adopted draft, from the floor, stating simply that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United

States and of the State in which they reside,' a sentence included to reverse the Dred Scott holding that Negroes were not citizens. If this sentence had been written as a section by itself and had been left unmodified, there might be a defensible argument on the basis of ambiguous language that Congress had meant to do more than specify who were citizens. But the citizenship definition was added by the Republican leadership as the first sentence in a section which went on to declare, immediately following, that no State should abridge the privileges and immunities of national citizens. Read in terms of plain language or of legislative history, then, the 'no State' sentence refutes the idea that the citizenship sentence had been intended by the framers to give Congress authority to punish private action, unless one is to accept the remarkable theory of Professors Flack and ten Broeck that the sharp alterations of language in the several drafts of the 14th amendment made no constitutional difference, the framers being all pro-civil-rights men. This argument, of course, ignores the Republican opposition to Bingham's proposal and mistakes the recorded understanding of Congress and the ratifying States that in the course of the debate over the 14th amendment congressional jurisdiction over private discrimination had been abandoned.

"In defense of his reading of the citizenship sentence, Harlan cited the prewar cases of Prigg and Ableman, where the Court had upheld the operation of national fugitive slave legislation on private persons despite language in the supporting constitutional provision, article IV, section 2, referring to 'any law or regulation' which interfered with recapture. Since the Court had not limited congressional power in protecting the master's rights, Harlan felt, the Court should not adopt a narrower rule for the amendment bestowing citizenship rights on the former slaves. The obvious answer to this is that the Constitution had not dealt with the rights of masters and of new citizens in identical terms. In order to put through Congress and the States a protection against State infringement of citizenship rights, the civil rights supporters had been forced to drop the clause which might have upheld congressional control over private discrimination; article IV, section 2 was unmarred by such legislative history or by clear language against a private action interpretation. Thus, while the Prigg and Ableman decisions were themselves extreme, Harlan's reasoning if adopted would have done even more violence to constitutional interpretation." (Westin, John Marshall Harlan, 66 Yale L.J. 637, 700–702 (1957).)

FINDINGS FROM REVIEW OF LEGISLATIVE HISTORIES

Should the Supreme Court be called upon to determine the constitutionality of a new Federal public accommodations law and to reverse or to distinguish the 1883 decision in the Civil Rights Cases, supra, the intended effects of the 13th and 14th amendments regarding segregation in places of public accommodation will be brought squarely into issue anew. The disposition of this issue would require a review of the legislative history of these amendments similar to that presented to and made by the Supreme Court in arriving at its decision in the Brown cases to overrule Plessy versus Ferguson.

In order to ascertain to the fullest extent the intentions of the framers and the ratifiers of the 14th amendment regarding segregation in public schools, the Supreme Court in that case propounded two questions to the litigants. These two questions were:

"(1) What evidence is there that the Congress which submitted and the State legislatures which ratified the 14th amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?

"(2) If neither the Congress in submitting nor the States in ratifying the 14th amendment understood that compliance with it would require the immediate abolition of segregation in public schools, was it nevertheless the understanding of the framers of the amendment (a) that future Congresses might, in the exercise of their power under section 5 of the amendment, abolish such segregation, or (b) that it would be within the juridical power, in the light of future conditions, to construe the amendment as abolishing such segregation of its own force?" (*Brown* v. *Board of Education, supra,* brief for Prince Edward County, Va., appellees on reargument, 5–26–27 (1953).)

Counsel for the appellees in the Prince Edward County, Va., case answered the first question as follows:

"There is substantial evidence that the Congress which submitted the 14th amendment both contemplated and understood that it would not abolish segregation in the public schools.

"There were 37 States in the Union at the time of the ratification of the amendment. There is affirmative evidence from 23 of these States that it was understood that the amendment would not abolish school segregation. In 14 States, no evidence, either affirmative or negative, is available. In not one State have we found substantial affirmative evidence that it was either contemplated or understood that ratification of the amendment would mean that segregation in the public schools was abolished." (*Brown* v. *Board of Education of Topeka, supra,* Brief for Prince Edward County Appellees on Reargument, 5–6 (1953).)

They then answered the second question as follows:

"(a) There is no indication that the Congress that proposed the amendment understood that future Congresses might act to abolish school segregation. In succeeding Congresses, there were many who thought that Congress had this power, but they were never enough to enable Congress to enact a statute outlawing school segregation. This question should, therefore, be properly answered in the negative.

"(b) No. * * * The Congress that proposed the 14th amendment did not understand that it would be within the judicial power, in light of future conditions, to construe the amendment as abolishing school segregation of its own force." (Id. at 27, 31.)

The evidence offered by the counsel for the Virginia appellees should have resolved in their favor beyond all reasonable doubt the issues posed in the Court's questions. But, by some amazing act of juridical legerdemain, the Supreme Court found instead that the available sources of the history of the 14th amendment did not dispose of the issues. The Supreme Court found that these sources were at best inconclusive as to what others—outside of the proponents and the opponents of the amendment—in Congress and the State legislatures had in mind regarding the intended effects of the amendment.

"The most avid proponents of the postwar amendments undoubtedly intended them to remove all legal distinctions among 'all persons born or naturalized in the United States.' Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the amendments and wished them to have the most limited effect. What others in Congress and the State legislatures had in mind cannot be determined with any degree of certainty." (Id. at 489.)

The Court cited as "an additional reason for the inconclusive nature of the amendment's history, with respect to segregated schools, * * * the status of public education at that time." Ibid. The institution of public education, as compared to its stage of development in 1868, had become so transformed as now to be wholly beyond the limits of the contemplations of the framers and ratifiers of the 14th amendment. In the opinion of the Court, "it is not surprising that there should be so little in the history of the 14th amendment relating to its intended effect on public education." (Id. at 490.)

ABERRATON OF SUPREME COURT

The Supreme Court erred gravely in finding not only that the sources of history of the 14th amendment did not specifically dispose of the issues in favor of the Virginia appellees, but also that this history was generally inconclusive. I do not believe that this finding would stand up under the sunlight of traditional standards of appellate review. I invite your attention to appendixes A and B of the Virginia appellees' brief as more than adequate proof of the Supreme Court's aberration in the Brown cases.

APPENDIX A

THE FOURTEENTH AMENDMENT BEFORE CONGRESS

1.—INTRODUCTION

The first 10 amendments of the Constitution of the United States, effective in 1791, were limitations on the powers of the Central Government. So, too, was the 11th, ratified in 1798, while the 12th, which became a part of the Constitution in 1804, changed the mechanics for the election of the Executive. None of these in any way extended the power of the Government of the United States.

Sixty years then elapsed without further change of the Constitution. Toward the end of this period came the extreme convulsion of civil war. At least one of the purposes of those who were successful in that conflict was to increase the power of the Central Government in relation to the State governments. So the Congress of Representatives of the Northern States proposed in rapid succession soon after the end of the war three constitutional amendments that, for the first time, extended the powers of the Government in Washington.

These amendments had their bases in war. They were not framed overnight; they developed and progressed from stage to stage as a part of the pattern of reconstruction. With the 13th and 15th amendments, we shall not deal in detail, for they are of no significance in the field of school segregation, but we point out, as an aside, that the necessity for the 15th amendment makes clear the error of those who claim that the 14th amendment is all-encompassing.

The 14th amendment grew out of the Civil Rights Act of 1866; that, in turn, must be considered along with its forerunner, the Freedmen's Bureau bill. So we must begin our review before the 14th amendment was proposed for ratification. Furthermore, Congress is in many respects a continuing institution; many of the same persons sit for years in the succeeding sessions. Congressional action after the ratification of the 14th amendment is therefore of significance also. The fever pitch of reform lasted with diminishing force at least until the Civil Rights Act of 1875 became law.

So if we are to scour the records for the sentiment of Congress as to the meaning of the 14th amendment, we must cover the entire decade from 1866 to 1875. That we propose to do. It is not an easy task, nor one subject to the refinements of mathematical exactitude. We look primarily for references to the schools. But we cannot tell exactly what weight to accord to each passing remark. Certainly every reference by one Member of Congress to the school system is not to be taken as the sentiment of Congress as a whole. We must, therefore, weigh as well as recount the statements as to schools.

We seek here, therefore, two things: the first is the general purpose of the amendment with relation to the school system, and

the second is the weight to be accorded specific mention of the schools. With these aims in mind, we pass to a review of the congressional history of the decade in as much detail as space permits.

2.—THE EARLY DISTRICT OF COLUMBIA SCHOOLS

The powers given by the Constitution to Congress in respect of the District of Columbia are plenary; Congress establishes and controls the school system of the District. The will of Congress as to segregated schools is thus directly reflected by its action as to the District.

There was no publicly supported educational system for Negro children in the District prior to the abolition of slavery there in April 1862. Schools were then established but only on a segregated basis to be supported by taxes levied on property owned by Negroes. The method of raising money for these schools was changed in 1864; school taxes levied on all property were then to be divided in proportion to the number of children of each race. Segregation remained unchanged.

Thus, from the very beginning, schools have been segregated by Congress in the District of Columbia. They remain segregated today.

3.—THE FIRST SUPPLEMENTAL FREEDMEN'S BUREAU BILL

This bill was the first effort at congressional reconstruction and a forerunner of the 14th amendment. It was designed to supplement the original Freedmen's Bureau bill enacted in March 1865 to protect freedmen in territory under Federal control.

The first six sections of the bill as it came from the Judiciary Committee of the Senate related directly to reconstruction. They authorized division of the Southern States into districts, the appointment of commissioners, the reservation of land and its award to loyal refugees and freedmen. They authorized the construction of school buildings for freedmen, but there is nothing to indicate that mixed schools were intended by this provision, although some opponents thought that it might be used to force mixed schools at a later date.

The seventh section consisted of the statement of principles that were the seed of the 14th amendment. It provided that if, because of any State or local law, custom or prejudice:

"* * * any of the civil rights or immunities belonging to white persons, including the right to make and enforce contracts, to sue, be parties, and give evidence; to inherit, purchase, lease, sell, hold and convey real and personal property, and to have full and equal benefit of all laws and proceedings for the security of person and estate, are refused or denied to Negroes * * * on account of race * * * it shall be the duty of the President of the United States, through the Commissioner, to extend military protection * * * over all cases affecting such persons so discriminated against."

Section 8 contained the proposed sanction, making it a misdemeanor for any person to subject any other person on account of color:

"* * * to the deprivation of any civil right secured to white persons, or to any different punishment. * * *"

These provisions of the bill were to apply only to those States or districts where the ordinary course of judicial proceedings had been interrupted by war. All offenses were to be heard before and determined by officers and agents of the Bureau.

In debate in the Senate, questions were raised as to the power of Congress to provide education for the freedmen and as to the effect of the bill on antimiscegenation statutes. But Senator Trumbull of Illinois, one of the leaders of the radicals and the Senator who had introduced the bill, made it clear that there was no intention to prohibit antimiscegenation statutes. The bill passed the Senate on January 25, 1866, by a partisan vote.

The bill then went to the House. There, Mr. Dawson of Pennsylvania stated that the radicals desired mixed schools though he did not indicate that the bill required it. Mr. Moulton of Illinois thought the civil rights protected by the bill to include only fundamental rights, such as the rights to liberty, to hold property, and to contract. On the other hand, Mr. Thornton took a broader view, apparently believing that the statute was intended to permit miscegenation. The bill passed the House on February 6, 1866, by a vote of 136 to 33, and the Senate promptly agreed to minor House amendments.

The President vetoed the bill on February 19. The veto was sustained by a narrow margin in the Senate, after a short debate in which Senator Davis of Kentucky noted that segregation of some sort was prevalent in almost every State. The bill in a slightly modified form was reenacted later in the session over the veto of the President. There was substantially no debate at that time.

We cannot draw from this history any conclusion that the civil rights referred to in the bill included a right for the Negro to attend the same school as the white.

4.—THE CIVIL RIGHTS ACT OF 1866

This act is particularly important in any history of the 14th amendment since it was designed to cover the same field in much the same language. It was a companion measure to the Freedman's Bureau bill, both having been introduced at the same time by Senator Trumbull of Illinois. But there was one major difference: the Freedmen's Bureau bill was applicable only to the States that seceded while the Civil Rights Act applied throughout the United States. Because of this distinction one prominent Representative thought the former within constitutional bounds but the latter invalid as encroaching on the rights of the States.

The bill that became the Civil Rights Act provided as introduced:

"That there shall be no discrimination in the civil rights or immunities among the inhabitants of any State or Territory of the United States on account of race, color, or previous condition of slavery; but the inhabitants of every race and color * * * shall have the same rights to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, and shall be subject to like punishment, pains, and penalties, and to none others, any law, statutes, ordinance, regulation, or custom to the contrary notwithstanding."

The bill was bitterly contested in both Houses because of vagueness and on constitutional grounds. Its patron, Senator Trumbull of Illinois, pointed out that it included only the civil rights specifically enumerated:

"The first section of the bill defines what I understand to be civil rights: the right to make and enforce contracts, to sue and be sued, and to give evidence, to inherit, purchase, sell, lease, hold, and convey real and personal property.

* * * * *

"This bill has nothing to do with the political rights or status of parties. It is confined exclusively to their civil rights, such rights as should appertain to every freeman."

But others were not so sure. Senator Saulsbury, a Democrat from Delaware, was much troubled by the general language. Senator Cowan, Pennsylvania Republican, thought that it might mean the end of segregated schools in his State; he characterized the bill as "monstrous." Two Senators thought that antimiscegenation statutes might be outlawed, not by the general language of the bill but by the freedom of contract provision. But Senator Trumbull reiterated that the bill was concerned only with civil rights and that it would not prohibit antimiscegenation laws. The bill passed the Senate on February 2, 1866, by a vote of 33 to 12.

When the bill came before the House on March 1, 1866, the floor leader was Mr. Wilson of Iowa, chairman of the Judiciary Committee to which the bill had been committed. In opening debate on the bill, he spoke as follows on its general provisions:

"This part of the bill will probably excite more opposition than any other. * * * What do these terms mean? Do they mean that in all things civil, social, political, all citizens, without distinction of race or color, shall be equal? By no means can they be so construed. * * * Nor do they mean that * * * their children shall attend the same schools. These are not civil rights or immunities."

There could hardly be a clearer statement that the language of the Civil Rights Act is not intended to abolish segregated schools. Nor could the statement come from a more important source: the chairman of the committee and floor leader as to the bill.

But Mr. Rogers, a States rights Democrat from New Jersey, seems to have taken the opposite view. He was bitterly opposed to the bill and thought it far beyond the power of Congress. He referred to the statutes prohibiting miscegenation and the Pennsylvania act requiring school segregation. He continued:

"Now, if this Congress has a right, by such a bill as this, to enter the sovereign domain of a State and interfere with these statutes * * *"

then it could confer suffrage on the Negro. But he alone seems to have thought that the bill might abolish school segregation where equal schools were provided and his view was based on principles at complete variance with those held by the vast majority of the House. In any event, his view as to the meaning of the bill cannot be accepted as authoritative for, as Mr. Justice Douglas said in *Schwegmann Brothers* v. *Calvert Distillers Corp.*, 341 U.S. 384, 394–5 (1951):

"The fears and doubts of the opposition are no authoritative guide to the construction of legislation. It is the sponsors that we look to when the meaning of the statutory words is in doubt."

Mr. Bingham of Ohio, a radical leader who had supported the Freedmen's Bureau bill, opposed this measure for he thought it beyond constitutional limitations. He thought that the opening language prohibiting "discrimination in the civil rights and immunities" should be omitted and moved to send the bill back to the committee. He was answered by Mr. Wilson as follows:

"He knows, as every man knows, that this bill refers to those rights which belong to men as citizens of the United States and none other; and when he talks of setting aside the school laws and jury laws and franchise laws of the States by the bill now under consideration, he steps beyond what he must know to be the rule of construction which must apply here, and as the result of which this bill can only relate to matters within the control of Congress."

Although Mr. Bingham's motion was defeated, the bill was sent back to the committee. On March 13, it came back to the House floor for further consideration. In committee, the bill had been amended to eliminate the initial broad generalities. As amended, it provided as follows:

"That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens of every race and color, without regard to any previous condition of slavery or

involuntary servitude, except as a punishment for crimes whereof the party shall have been duly convicted, shall have the same right to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding."

Mr. Wilson, still in charge of the bill, stated that the change was made to appease those who thought the bill too broad, although he did not think that the amendment materially changed the bill. He went on to say that one purpose of the amendment was to eliminate fears that the bill might confer suffrage on the Negro:

"To obviate that difficulty and the difficulty growing out of any other construction beyond the specific rights named in the section, our amendment strikes out all of those general terms and leaves the bill with the rights specified in the section."

The bill was then passed by the House by a vote of 111 to 38. The House amendments were adopted in the Senate without debate.

On March 27, 1866, the President returned the bill to the Senate without his approval. His veto message contains his objections to the bill section by section. He stated that by the first section:

"* * * a perfect equality of the white and colored races is attempted to be fixed by Federal law in every State of the Union, over the vast field of State jurisdiction covered by the enumerated rights. In no one of these can any State ever exercise any power of discrimination between the different races."

He added that he did not believe that the bill would annul State laws in regard to marriage; but if Congress could prohibit discrimination in the matters specifically limited in the bill, it could repeal State marriage laws.

The radical element of Congress was determined to enact the bill and delayed its reconsideration in the Senate until the composition of that body had been arranged more to its liking. The bill was brought up on April 4 and a vigorous debate ensued. Little in this debate is of interest here, except to note a substitute bill proposed by Senator Doolittle of Wisconsin. His bill would have provided simply that the States should not inflict any incident of slavery upon a Negro, leaving to the judiciary the task of determining those incidents. This is one of very few instances where it was proposed that Congress look to the judiciary; his bill was not considered seriously and did not survive.

The bill as to civil rights was passed in the Senate over the President's veto on April 6, 1866, by a vote of 33 to 15. Little debate was permitted in the House and the bill was passed there 3 days later by a vote of 122 to 41. It thus became law.

The Civil Rights Act is, we believe, important because of its reference to the "full and equal benefit of all laws." This can have no meaning except equal protection. But the leader of those who sought enactment of the bill in the House made it unmistakably clear that the act had no relation to or effect on segregated schools. Those who spoke in generalities or in fearful opposition are not to be taken as authoritative interpreters of legislation. On the other hand, the views of the floor leader and committee chairman, shared by other proponents, are of telling significance.

One word more should be added. The proponents of the act thought that it applied only to the rights specifically listed in the first section; the President in his veto message makes it clear that he shared that view and even opponents of the measure eventually agreed to that interpretation. Nothing in that first section has any specific relation to the educational system. Appellants make many sweeping statements as to the bill, but their "generalizations" (brief, pp. 90–92) are not based on the record. In our opinion, the record proves that mixed schools were not within the contemplation of Congress when the Civil Rights Act was enacted.

5.—THE RESOLUTION PROPOSING THE AMENDMENT

We have, for convenience, discussed the Freedmen's Bureau bill and the Civil Rights Act as if they were taken up and concluded before the resolution proposing the 14th amendment was put before Congress. But they were all contemporaneous. The first proposals to amend the Constitution preceded the introduction of those bills. The major debates on the proposed amendment came only after consideration of the bills had been concluded and were, therefore, to some extent shaped by what had been said in their regard; but the initial steps came before final action on the bills. During this period many minds collaborated to shape the amendment in its final form, and particularly the first section with which we are chiefly concerned.

When the 39th Congress convened for its first session in December 1865, Thaddeus Stevens, the Pennsylvania radical, proposed the creation of a Joint Committee on Reconstruction to consist of 6 Senators and 9 Representatives. This proposal was soon adopted, and it was this committee that evolved the resolution that proposed the 14th amendment.

We must point out at once that the meaning of the 14th amendment cannot, as appellants seek (brief, pp. 93–103), be derived from extraneous statements of wishes and desires by members of this committee. Its majority were the fire-eaters; they may well have wished to destroy all race distinctions. But what they wished to do and what the majority in Congress were willing to do were quite different things; they did not speak for the majority. As a result, what they wished to do and what they in fact did were quite different things. Even their leader, Stevens, recognized this when he spoke about the amendment in almost its final form:

"This proposition is not all that the committee desired. It falls far short of my wishes, but it fulfills my hopes. I believe it is all that can be obtained in the present state of public opinion. * * * Upon a careful survey of the whole ground, we did not believe that 19 of the loyal States could be induced to ratify any proposition more stringent than this."

So we must be careful to distinguish between general statements and specific statements of interpretation of the amendment. If we rely only on the latter, we can find its true historical meaning.

Mr. Stevens introduced a proposed amendment at the beginning of the session, and Mr. Bingham of Ohio, "the Madison of the first section of the 14th amendment," as Mr. Justice Black aptly calls him, introduced another phrased in different terms. These proposals went to the Committee on Reconstruction which considered them together with various substitutes. At length, on February 3, 1866, the committee adopted and 10 days later reported to the Senate and House a proposed amendment as follows:

"The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens in the several States; and to all persons in the several States equal protection in the rights of life, liberty, and property."

Mr. Bingham brought this proposal before the House for debate on February 26, and a lively debate followed. He argued that the proposed amendment simply gave Congress a right of enforcement, that all of the rights included in it had been conferred by other provisions of the Constitution but that Congress had had no enforcing power. He turned to the privileges and immunities clause of article IV, section 2, and the due process provision of the fifth amendment; apparently he thought that Congress was now to be given the power to enforce these provisions on the States. No very clear conception of detailed purpose comes from his speech.

Opposition arose at once. Mr. Rogers of New Jersey quickly pointed out that the proposed amendment was designed to give constitutional sanction to radical legislation such as the Civil Rights Act (then on the way to enactment). He feared also that it would authorize congressional repeal of antimiscegenation statutes and action in all fields to give the Negroes all the rights of the whites. This might include congressional power to compel amalgamated schools. A number of Representatives then spoke to the same effect as Mr. Bingham; no new powers were to be conferred but the enforcement power was to be strengthened.

Mr. Hale, of New York, spoke in opposition, objecting to the "extremely vague, loose, and indefinite provisions" of the proposed amendment. It was, he thought, a grant of extreme legislative power; Congress might undo the statutes placing married women under disabilities. Mr. Bingham answered him by denying any such intention, though his rationalization is again difficult. He also delivered an elaborate speech toward the end of the debate but no great meaning can be derived from it. His conclusion was that the proposed amendment—

"* * * certainly does this: It confers upon Congress power to see to it that the protection given by the laws of the States shall be equal in respect to life and liberty and property to all persons."

This may glitter but it is fool's gold. If that is what the amendment was to do, its exalted level seems far above that of the public schools.

After Mr. Bingham had concluded, two representatives from New York suggested that the matter be postponed. Apparently, a majority were unwilling to confer affirmative power on Congress in the way proposed by the amendment, desiring instead a prohibition on the States. So postponement was agreed to. This particular proposal was never heard of again.

More than 2 months now elapsed before anything further was done on the proposed amendment, either in committee or on the floor. During that period the Civil Rights Act was passed, vetoed, and passed over the veto. It was not until April 21, 1866, that a new plan came before the committee, this time presented by Stevens but in fact prepared by Robert Dale Owen. This was in five sections (as is the amendment as ratified) but the first section provided simply that there should be no discrimination as to civil rights by the States of the United States on account of color.

Mr. Bingham at once sought to insert an equal protection clause, but this was rejected. He then tried to add to the enforcement clause in section 5 the following provision:

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

We now approach the final form. On April 25, a motion to strike out Bingham's addition to section 5 was carried. At the next meeting Bingham sought to substitute for section 1 in the draft his proposed addition to section 5. This was finally agreed to by a vote

of 10 to 3. The amendment in this form was ordered reported to Congress by a partisan vote. Nothing in the proceedings of the committee indicates that it at any time intended to require amalgamated schools.

The proposed amendment left the committee accompanied both by majority and by minority reports. Schools are mentioned in neither. The majority were concerned primarily in securing civil rights for the Negroes, apparently the civil rights supposedly protected in the Civil Rights Act. Its report concluded in this way:

"The conclusion of your committee, therefore, is that the so-called Confederate States are not, at present, entitled to representation in the Congress of the United States; that, before allowing such representation, adequate security for future peace and safety should be required; that this can only be found in such changes of the organic law as shall determine the civil rights and privileges of all citizens in all parts of the republic, shall place representation on an equitable basis, shall fix a stigma upon treason, and protect the loyal people against future claims for the expenses incurred in support of rebellion and for manumitted slaves, together with an express grant of power in Congress to enforce those provisions. To this end they offer a joint resolution for amending the Constitution of the United States, and the two several bills designed to carry the same into effect, before referred to."

The minority, Democrats all, argued that the Southern States had never left the Union. They were, therefore, entitled to immediate representation in Congress and the country need not fear readmission of their representatives. Furthermore, they pointed out that a provision for mandatory Negro suffrage was not included in the proposed amendment because to have gone so far "would be obnoxious to most of the Northern and Western States. * * *"

The resolution so approved by the committee was introduced in both the Senate and the House on April 30, 1866. It was debated first in the House, the debate opening on May 8, 1866.

Thaddeus Stevens spoke first. His concept of the purpose of section 1 was clear. All of its provisions, he declared:

"* * * are all asserted, in some form or other, in our Declaration or organic law. But the Constitution limits only the action of Congress, and is not a limitation on the States. This amendment supplies that defect, and allows Congress to correct the unjust legislation of the States, so far that the law which operates upon one man shall operate equally upon all. * * *"

He continued:

"Some answer, 'Your civil rights bill secures the same things.' That is partly true, but a law is repealable by a majority. And I need hardly say that the first time that the South with their copperhead allies obtain the command of Congress it will be repealed. * * *"

But the first section was not to his practical mind of greatest significance:

"The second section I consider the most important in the article."

To Thaddeus Stevens, then, the first section was equal protection, the purpose was to write the Civil Rights Act into the Constitution, and these were generalities not of significance in comparison with the greater practical purpose of the second section to limit southern representation.

It will not do to assert, as appellants do (brief, p. 118), that Stevens made it clear that the amendment was to go further than the Civil Rights Act. He made no such statement nor can any such intention be implied. He discussed in specific terms punishment for crime, means of redress, protective laws and testimony in court, all of which were listed in the Civil Rights Act; he never mentioned in any terms an attempt at broader application.

Mr. Finck, a Democrat from Ohio, followed; if the first section was necessary, the Civil Rights Act was unconstitutional. Mr. Garfield, also from Ohio but, of course, a Republican, disagreed; he stated that the purpose was to prevent the repeal of the Civil Rights Act. Mr. Thayer of Pennsylvania, a Republican, adopted the same view. Mr. Boyer, a Pennsylvania Democrat, opposed the proposed amendment:

"The first section embodies the principles of the civil rights bill. * * *"

Mr. Broomall, a radical, did not disagree on this point:

The fact that all who will vote for the pending measure, or whose votes are asked for it, voted for this proposition in another shape, in the civil rights bill, shows that it will meet the favor of the House."

Mr. Shanklin of Kentucky spoke next. A Democrat, he opposed the proposed amendment as investing "all power in the General Government." He was followed by Mr. Raymond, the Republican publisher of the New York Times. Mr. Raymond said that this was the third time that this matter had come before the House; the first was Bingham's proposed amendment, the second the Civil Rights Act. Mr. Raymond opposed the Civil Rights Act for he thought the power of Congress to enact it "very doubtful, to say the least." He concluded:

"And now, although that bill became a law and is now upon our statute book, it is again proposed so to amend the Constitution as to confer upon Congress the power to pass it."

Many other speakers followed; it is only necessary to touch on major speeches. Mr. Eliot, a Massachusetts radical, was in favor of putting the Civil Rights Act in the Constitution. Mr. Randall of Pennsylvania opposed; he spoke in general terms of the broad applicability of the amendment, pointing out that suffrage was not included. Mr. Rogers of New Jersey, ever a States rights Democrat, held strong views. The first section, he thought—

"* * * is no more nor less than an attempt to embody in the Constitution of the United States that outrageous and miserable civil rights bill. * * *"

He was excited about privileges and immunities. He thought that this phrase covered many rights, but he did not mention schools. He predicted revolution.

He was followed by Mr. Farnsworth who picked up the phrase "equal protection of the laws" as new to the Constitution. He thought that none could object to this concept but he did not attempt its definition.

Mr. Bingham followed with a major speech. As in so many of his utterances, he sparkles with generalities but his exact meaning is obscure. He said:

"* * * this amendment takes from no State any right that ever pertained to it."

But apparently all he meant there was that States had exercised powers erroneously and that Congress might now supervise their exercise. He went back to nullification; he thought that Congress would be able to overcome the disabilities which any such theory might impose on citizens of the United States. But he comes nowhere near the subject of our investigation.

Mr. Stevens closed briefly. The vote was taken. The resolution proposing the amendment was adopted by a vote of 128 to 37.

Any review of the House debate must lead to the conclusion that most of the members thought that the chief purpose of section 1 of the proposed amendment was to place the provisions of the Civil Rights Act in the Constitution and thus to prevent the amendment or repeal of that act at any later date. We may then, it seems, interpret the amendment to mean the same thing that its supporters and the supporters of the Civil Rights Act considered that the act meant. That is all of a specific nature that we find in this debate.

The scene then passed to the Senate. Debate began on May 23, 1866. Senator Howard of Michigan took the lead in presenting the resolution since Senator Fessenden of Maine, the chairman of the Committee on Reconstruction, had not been well. He spoke at length on "privileges and immunities" for this clause, he apparently thought, contained the gist of section 1. He considered this phrase incapable of accurate definition, but he listed a great many that he thought included. These were the first eight amendments of the Constitution together with some even less well defined privileges and immunities included in article IV, section 2. Despite the long list that he gave, schools were never mentioned. He went on:

"The great object of the first section of this amendment is, therefore, to restrain the power of the States and compel them at all times to respect those great fundamental guarantees. How will it be done under the present amendment? As I have remarked, they are not powers granted to Congress, and, therefore, it is necessary, if they are to be effectuated and enforced, as they assuredly ought to be, that additional power should be given to Congress to that end. This is done by the fifth section of this amendment. * * * Here is a direct affirmative delegation of power to Congress to carry out all the principles of all these guarantees, a power not found in the Constitution."

But again, these guarantees include no reference to the public schools.

Senator Howard made clear his views on the last portion of the first section. He said that this portion:

"* * * does away with the injustice of subjecting one caste of persons to a code not applicable to another. It prohibits the hanging of a black man for a crime for which the white man is not to be hanged. It protects the black man in his fundamental rights as a citizen with the same shield which it throws over the white man."

That is the general field for the operation of the due process and equal protection clauses. They were not designed, as appellants assert, to wipe out all distinctions based on race or color. Senator Howard made this clear by his reference to the right to vote:

"But sir, the first section of the proposed amendment does not give to either of these classes the right of voting. The right of suffrage is not, in law, one of the privileges or immunities thus secured by the Constitution. It is merely the creature of law. It has always been regarded in this country as the result of positive local law, not regarded as one of those fundamental rights lying at the basis of all society and without which a people cannot exist except as slaves, subject to a despotism."

Is the right to go to an amalgamated school one of those "fundamental rights"? Is it more than the right to vote itself? Howard could not have thought so.

Howard spoke also of the last section of the proposed amendment. He added that section 5 gave Congress power to pass laws—

"* * * appropriate to the attainment of the great object of the amendment."

Howard, like Stevens, made it clear later on that the amendment did not go as far as he would like. He said:

"* * * it is not entirely the question what measure we can pass the two Houses; but the question really is, what will the legislatures * * * do * * *?"

* * * * *

"The committee were of opinion that the States are not yet prepared to sanction so fundamental a change as would be the concession of the right of suffrage to the colored race."

Appellants assert (Brief, p. 118) that, like Stevens, Howard thought that the amendment went beyond the Civil Rights Act. That is inaccurate. The contrary is true. When asked as to the purpose of the proposed amendment, Howard said:

"We desired to put this question of citizenship and the rights of citizens and freedmen under the civil rights bill beyond the legislative power. * * *"

Senator Wade on the same day moved a substitute which contained the germ of the definition of citizenship. Further consideration was then postponed. The Senate Republicans went into caucas where no doubt most of the basic differences were threshed out. Of the debates there we have no record. On May 29, the Senate returned to a consideration of the proposed amendment. Senator Howard at once offered a series of amendments, the product of the caucus. The only amendment proposed for section 1 was the addition of the clause defining citizenship.

Some debate followed on the citizenship provision. Then Senator Doolittle of Wisconsin asserted that the amendment was designed to validate the Civil Rights Act. Senator Fessenden denied that he had heard such a purpose mentioned in the committee, but he had missed many sessions and Senator Howard interposed to remark that the purpose of the amendment was to prevent the repeal of the Civil Rights Act.

Senator Poland of Vermont made a speech in which he stated that the purpose of section 1 was to permit Congress to prohibit State interference with the privileges and immunities referred to in article IV, section 2. He admitted that the proposed amendment would not confer suffrage on the Negro. Senator Stewart of Nevada renewed the general theme that the proposed amendment was designed to put the Civil Rights Act in the Constitution.

At last we come to a reference to schools. Senator Howe, Wisconsin Republican, interpreted the equal protection clause to require a State to provide "protection of equal laws," a concept now familiar. As an example of what would be outlawed, he cited a Florida statute taxing whites and Negroes to support white schools and then taxing Negroes again to support Negro schools. His suggestion very properly was not denied.

Senator Davis of Kentucky, an opponent of the proposed amendment, spoke at length. He expressed the view that the amendment was designed to provide constitutional support for the Civil Rights Act. He was followed by Senator Henderson, a Republican from Missouri. He listed the rights given by the Civil Rights Act; schools were not mentioned. He implied that the proposed amendment would accomplish only the same result as the Civil Rights Act. Senators Hendricks and Johnson concluded the debate by stating that portions of section 1 could not be understood. The vote was then taken—June 8, 1866—and the resolution was adopted by a vote of 33 to 11.

The resolution went back to the House for concurrence in the Senate amendments. Debate was limited to 1 day. Mr. Rogers stated that the resolution "embodied the gist of the civil rights bill." The House concurred with the Senate amendments on June 13 by a vote of 120 to 32.

From this review, what conclusions are to be drawn? If we turn to Flack, we find these:

"In conclusion, we may say that Congress * * * had the following objects and motives in view for submitting the first section of the 14th amendment to the States for ratification:

"1. To make the Bill of Rights (the first eight amendments) binding upon or applicable to the States.

"2. To give validity to the civil rights bill.

"3. To declare who were citizens of the United States."

Fairman disagrees at length with the first conclusion and we are rather of the view that his position is the proper one.

But that is all beside the point before us now. Without regard to that dispute, there are in all these thousands of words few passages that are directed in terms to the question of segregated schools. Furthermore, most of those who spoke considered that the amendment was designed to cover the same field as the Civil Rights Act. We know from the authoritative Mr. Wilson that the Civil Rights Act was not intended to disestablish segregated education.

The 14th amendment then went to the States. In another place we review the evidence of record there. We continue here to follow the congressional path.

6.—CONTEMPORARY SCHOOL LEGISLATION FOR THE DISTRICT

The debate on the resolution proposing the 14th amendment began in earnest on May 8, 1866, when Mr. Stevens opened the fight in the House after the reports of the Committee on Reconstruction had been filed. The resolution achieved final passage on June 13, 1866. Right in the middle of this short period the Senate took action to confirm the existence of segregated schools in the District of Columbia.

On May 21, 1866, the Senate passed "An act donating certain lots in the city of Washington for schools for colored children in the District of Columbia." This act, which became law on July 28, required the Commissioner of Public Buildings:

"* * * to grant * * * to the trustees of colored schools for the cities of Washington and Georgetown * * * for the sole use of schools for colored children * * * [named lots], said lots having been designated and set apart by the Secretary of the Interior to be used for colored schools. * * *"

If the 14th amendment was designed to do away with separate schools for the Negroes, the Members of Congress who proposed the amendment certainly did not so understand it, or their action is so inconsistent as to be incomprehensible. Not only was the statute just quoted enacted at this time but another statute was adopted almost simultaneously to provide for an equitable apportionment of school funds to the Negro schools. We take these statutes as uncontrovertible approval of the continuance of segregated schools in the District by the Congress that proposed the 14th amendment to the States.

7.—THE READMISSION ACTS

In the Reconstruction Act of 1867, one of the conditions to be satisfied before representatives of the seceding States were to be readmitted to Congress was that each State should submit a revised constitution for congressional approval. Congress began the consideration of these revised constitutions when a bill for the readmission of Arkansas came before the first session of the 40th Congress in 1868.

During the consideration of this bill in the Senate, Senator Drake, a Republican from Missouri, moved to add as a condition that the right to vote or "any other right" should not be denied or abridged because of race or color. His colleague, Senator Henderson, also a Republican, apparently thought that this proposal might affect segregated schools. He therefore moved an amendment to make specific the permission for such schools. Henderson's amendment was not accepted for it was apparently thought unnecessary, Senator Frelinghuysen of New Jersey stating his view that neither the 14th amendment nor Drake's proposal "touched" the mixed school question. The House refused to agree to the Drake amendment.

Shortly thereafter, the Senate considered a House bill for the readmission of North Carolina, South Carolina, Georgia, Alabama, and Louisiana. In the Judiciary Committee, the Drake amendment was added except that it was limited to the right to vote alone and the provision as to "any other right" was omitted. Senator Trumbull, chairman of the Judiciary Committee and author of the Civil Rights Act of 1866, explained the action of the committee:

"And the committee have recommended the striking out of this fundamental condition and inserting the words contained in the [Drake] amendment which was adopted by the Senate to the Arkansas bill with the exception of the words 'or any other rights.' Those words which were in that amendment offered by the Senator from Missouri are omitted by the Judiciary Committee in reporting this bill, it being thought that there was no necessity for their insertion, and that it might lead to a misunderstanding as to what their true purport was. * * * It might be construed by some persons as applying possibly to social rights, or rights in schools, which the Senator from Missouri did not intend. * * *"

Senator Trumbull thus adopts a consistent course. His statement would be incomprehensible if he had thought that the 14th amendment abolished segregation in the schools. He makes clear, contemporaneously with ratification of the amendment, his view that whether or not schools shall be segregated is a matter for the discretion of the States.

8.—CHARLES SUMNER

The 14th amendment became a part of the Constitution on July 28, 1868. Of course, the Members of Congress were not thereafter, in an authoritative sense, entitled to interpret the amendment, but they discussed it at great length. And the question of amalgamated schools was one that, along with other forms of racial segregation, occupied the attention of Congress for much of its sessions until the crusading spirit faded away after 1875.

In reviewing these debates, we shall find many who opposed school segregation and many who favored it. The discussions both by proponents and opponents covered two fields: expediency and constitutionality. We will not review discussions of expediency for they can have no relavance to the scope of the 14th amendment since it was already a part of the Constitution. We will touch on the constitutional debate, but we must recall that it is often hard to separate the two. This general rule should be borne in mind as the story unfolds.

The opposition to racial segregation had one leader, a man of such remarkable talent that we interrupt here for a moment the chronological story to make particular mention of his character. That was Charles Sumner, Senator from Massachusetts from 1851 until his death on March 11, 1874. He was born in Boston in 1811 and was graduated from both the College and Law School of Harvard University. Thereafter, he traveled widely in Europe, forming friendships with important leaders abroad that lasted for the rest of his life.

On his return to Boston, Sumner began the practice of law. He took his place in the circle of New England culture that flourished so brightly in that era. He was the close friend of Longfellow and Whittier. But Sumner's genius was of a political turn. He became a leader in the group of intellectual abolitionists centered in Boston that played such a dramatic role in bringing on the crisis of civil war.

Sumner entered the Senate in 1851. He at once made clear his abolitionist sentiments and continued his activities in the field of race relations throughout his subsequent career. He took a leading role in the success-

ful effort made by Congress to assume control of the reconstruction program and he was the bitter enemy of Andrew Johnson. Strangely enough, he seems to have had little part in framing the 14th amendment. But his interest in the Negro never flagged.

As we shall outline more in detail below, Sumner made strenuous efforts to outlaw school segregation in the District of Columbia in 1871–72. But most important to him was his bill to make segregation illegal in hotels, railway cars, schools, churches, and graveyards throughout the Nation. This bill became an obsession. As Carl Schurz, his contemporary in the Senate and a warm personal friend, said:

"This measure, indeed, was nearest to his heart, and he pressed it in season and out of season, urging it especially by way of amendment to amnesty bills as a joint measure of reconciliation."

He was never successful during his lifetime in forcing his bill to enactment though, amended to eliminate reference to schools, it was passed as the Civil Rights Act of 1875.

Not only was the advisability of his bill, the supplemental civil rights bill as he termed it, called in question but its constitutionality was under constant attack in the Senate. Sumner supported it by authority that seems remarkable today. During the first great debate on the measure in 1872, the record of a previous statement was quoted by an opponent:

"Mr. MORRILL of Maine. The Senator said that the Declaration [of Independence] was as much an authority as the Constitution of the United States.

"Mr. SUMNER. Very well; that I do say certainly and a little more."

Sumner immediately replied:

"Mr. SUMNER. Very well; I say a little more in what it is; that is, as a rule of interpretation. If you give preference to either, it is to the Declaration. Indeed, I cannot escape from that conclusion. It is earlier in time; it is loftier, more majestic, more sublime in character and principle."

This was not the only occasion on which he expressed this remarkable view. Later in the debate, he said:

"The great principles and promises of the Declaration of Independence must become a living reality, and that can be done only through an act of Congress."

In fact, his philosophy seems more than liberal even by today's standards. In reply to a Senator who wished to look more closely to the words of the Constitution, Sumner said:

"I have also sworn to support the Constitution, and it binds me to vote for anything for human rights."

This philosophy was almost too much even for Schurz, a wartime general in the Union Army. He commented that Sumner thought—

"The Declaration of Independence higher than the Constitution. * * *"

And Schurz points to Sumner's—

"* * * way of surmounting points of law by appeals to the rights of man."

Even Sumner's official biographer considered this approach to a constitutional problem unusual. He observed:

"[Morrill] complained, and had reason to complain, of Sumner's mode of handling a constitutional question—his drawing on sublime doctrines of human right rather than looking sharply at the written text."

It was Sumner's view, then, that a basis for outlawing school segregation might be found in the Declaration of Independence and that, as a result, Congress might properly act. Furthermore, where what he termed human rights were at issue, he did not consider it necessary to take into account the words of the Constitution. These novel theses discredit his judgment in constitutional matters.

His activities in Congress also make it clear that he did not conceive that the Constitution of itself forbade school segregation even after ratification of the 14th amendment. We find no reference to a suggestion of judicial action or judicial power and his insistence on congressional action negates any belief that the courts had the power to act unaided. But there is other confirmation on this point. On October 24, 1871, a convention of Negroes met in Columbia, S.C. To this convention, Sumner addressed a letter, dated October 21, 1871. In this letter, he said:

"Can a respectable colored citizen travel on steamboats, or railways, or public conveyances generally, without insult on account of color? * * * I might ask the same question in regard to hotels, or even common schools. A hotel is a legal institution, and so is a common school. As such, each must be for the equal benefit of all. Now, can there be any exclusion from either on account of color? It is not enough to provide separate accommodations for colored citizens, even if in all respects as good as those of other persons. Equality is not found in an equivalent, but only in equality. In other words there must be no discrimination on account of color. The discrimination is an insult and a hindrance, and a bar, which not only destroys comfort and prevents equality, but weakens all other rights.

"The right to vote will have new security when your equal right in public conveyances, hotels, and common schools, is at last established; but here you must insist for yourselves, by speech, by petition, and by vote. Help yourselves, and others will help you also. The civil rights law needs a supplement to cover such cases. This defect has been apparent from the beginning, and, for a long time, I have striven to remove it. I have a bill for this purpose now pending in the Senate. Will not my colored fellow-citizens see that those in power shall no longer postpone this essential safeguard? Surely, here is an object worthy of effort."

So Sumner, using terms which sound familiar for they are the same as those used by more modern agitators, clearly expressed the view that additional authorization was required before the segregated school would have to disappear.

It will, we believe, make the history of the early 1870's fall into clearer focus to keep these opinions in mind. Sumner was the protagonist in the segregation drama. He considered that school segregation had not already been outlawed; his view that Congress could pass the legislation necessary to do so was based on a concept utterly at variance with any normal canon of constitutional law.

9.—THE ENFORCEMENT ACTS (1870–71)

Brief mention must be made of these acts, though they add but little to our story. The first, which became law on May 31, 1870, was designed initially as a measure to enforce the 15th amendment. It dealt with the protection of the Negro's right to vote. It was thereafter enlarged to include enforcement of the 14th amendment and was amended to reenact the Civil Rights Act of 1866. Even though the 14th amendment was still a recent addition to the Constitution, no effort was apparently made to broaden the rights protected by act of Congress.

The opposition was not particularly stiff; Senators Vickers and Thurman spoke at length in opposition, presaging the views that they were to express in the great debate of 1872. The bill was passed by the Senate by a vote of 43 to 8, and was adopted in the House without substantial debate.

The Second Enforcement Act was approved on February 28, 1871. It dealt wholly with voting rights. It was adopted in both House and Senate by large majorities.

10.—THE SUPPLEMENTAL CIVIL RIGHTS BILL AND THE GENERAL AMNESTY ACT

As the 1860's gave way to the beginning of a new decade, Charles Sumner developed his supplemental civil rights bill. To it, as we have seen, he devoted much of his time and energy. It was the forerunner of the Civil Rights Act of 1875, adopted with restrictive amendments after Sumner's death in 1874.

The bill took several forms but, in general, all provided—

"That all citizens of the United States, without distinction of race, color, or previous condition of servitude, are entitled to the equal and impartial enjoyment of accommodations, advantages, facilities, or privileges furnished by common carriers * * * innkeepers * * * theaters * * * common schools * * * church organizations * * * cemetery associations. * * *"

A further provision purported to safeguard the right of all to serve as jurors and another would repeal all statutes, State or Federal, containing the word "white" for the purpose of discrimination as to color. Criminal and civil sanctions were included.

The bill had been introduced by Sumner in 1870 and in 1871 and had been unfavorably reported. When Congress met in December 1871, Sumner saw his opportunity. It will be recalled that section 3 of the 14th amendment had excluded from office many southern citizens, although the disability was subject to removal by a two-thirds vote of Congress. Sentiment in 1871 was strongly in favor of a general amnesty, excluding only a very limited number from its terms. Bills to that effect were introduced in both the Senate and the House; the House promptly passed its bill and sent it to the Senate.

The Senate first considered its own bill. Sumner moved in Committee of the Whole to tack on his supplemental civil rights bill as an amendment, saying that justice to the Negro must go hand in hand with generosity to the Southern States. A debate ensued but at last the amendment was defeated by a vote of 29 to 30. Sumner tried again in committee, but Thurman of Ohio opposed, as he always did, and nothing further was accomplished at this time.

When Congress met again in January 1872, the amnesty bill came before the Senate (after having been reported by the Committee of the Whole). Sumner again proposed his amendment. A tremendous debate followed. Sumner spoke again and again. The opposition was strangely divided. Some favored the amendment but not as a part of the amnesty bill for they thought the latter would be endangered in the House. Others, however, felt that the amendment, either in whole or in part, violated the Constitution. Its proponents refused to state the specific constitutional provisions supporting the amendment; Sumner, as we have seen, relied on the Declaration of Independence and on those unspecified provisions that supported the Civil Rights Act of 1866. But he was strongly, though vaguely, supported.

Senator Morrill of Maine made a strong speech attacking the constitutionality of Sumner's amendment. He assumed that its constitutional basis lay, at least in part, in the 14th amendment. But that was no proper basis. He said:

"I submit that in no proper sense can the 14th amendment be regarded as a substantive grant of power. It is in terms, in essence, and effect, a prohibition to the States."

He thought that the privileges and immunities clause was limited to those rights specifically listed in the Civil Rights Act of 1866 and that the Government of the United States had no right to take from the people the direction of education. Many other Senators expressed similar constitutional doubts. Ferry of Connecticut, for example, held the view that the Federal Government should

not interfere with schools and churches. Tipton thought that the judiciary should enforce the amendment and that Congress was empowered to act only when there was no other remedy.

When Sumner's amendment came to a vote, the result was a 28 to 28 tie. Vice President Colfax cast the deciding vote in favor of the amendment. Sumner was elated; he said:

"The bill is now elevated and consecrated."

But his fight was in vain, for the amnesty bill as so amended failed to receive the necessary two-thirds vote and was defeated.

After 3 months of quiet, the House bill to provide a general amnesty came before the Senate on May 8, 1872. Sumner immediately moved his supplemental civil rights bill as a substitute bill. Trumbull of Illinois replied that—

"The right to go to school is not a civil right and never was."

Ferry of Connecticut brought up the analogy of segregation by sex; could Congress outlaw such segregation? But Edmunds and Sherman supported Sumner. Sumner grew excited; he said:

"Now, question on my motion."

But the debate was to continue. Boreman, Casserly and Bean opposed the substitute. Ferry of Connecticut moved to strike out the provision as to mixed schools. He thought that dictation to local communities on school management would be "fatal to the school system of the country." He went on:

"* * * in the community where I reside there is no objection to mixed schools * * * and if I were called upon to vote there, I should vote for them. It would be a useless expense to establish separate schools for the few colored people in that community. But I cannot judge other communities by that community. * * * I believe the Senator's bill relating to the District of Columbia, for instance, would utterly destroy the school system in this District. * * *

"Take, for instance, the State of Ohio where I understand the law permits the district to have mixed or separated schools. * * * I observe a decision of the Supreme Court of Ohio reported in yesterday's newspapers, bearing upon the very point suggested in this bill; for it had been the assertion * * * that compelling the separation of the races into different buildings was a violation of the 14th amendment, notwithstanding that both races * * * enjoyed the same or equal accommodations, facilities, and advantages. That court * * * as I understand, the majority of it, of judges whose political opinions are like those of the majority of this body * * * 'sustained the constitutionality [of separate schools]. * * *'

"I believe that that decision of the Supreme Court of Ohio is good law."

But Ferry's amendment to eliminate schools was rejected, 25 to 26. And an amendment proposed by Blair to provide for local option was also defeated. Senators Bayard, Casserly, and Stockton attacked the constitutionality of Sumner's substitute, Casserly citing the Massachusetts case of *Roberts* v. *City of Boston* which upheld segregated schools.

Ferry then moved to add the amnesty bill to Sumner's substitute. That was agreed to, 38 to 14. Trumbull then moved to strike out Sumner's substitute and leave only the amnesty bill, but that was lost when the Vice President voted again to break a tie. Sumner's substitute was next defeated, 27 to 28, but when he moved to add his supplemental civil rights bill to the original House amnesty bill, his motion was adopted, again after a tie vote. But these maneuvers were in the end unsuccessful for the bill as so amended did not receive the required two-thirds vote and died.

Matters now passed to a crisis as far as amnesty was concerned. Shortly after 5 o'clock in the morning on May 22, 1872, the Senate took up Sumner's bill. Sumner was not present. The bill was amended to eliminate schools, churches, cemeteries, and juries and passed 28 to 14. The Senate then went on to consider amnesty. Sumner, outraged, appeared on the floor and moved to amend the amnesty bill by adding his supplemental civil rights bill in its original form. The Senate, now in no mood to tarry, rejected his proposal 13 to 27, and passed the amnesty bill in the form approved by the House. The vote was 38 to 2; of the 2 dissenting votes, 1 was Sumner's. It was after 10 o'clock in the morning when the Senate adjourned.

The House took no action on Sumner's bill. It had, on March 11, 1872, defeated a motion to suspend the rules and then to consider a desultory resolution declaring, among other things, that it would be unconstitutional for Congress to force mixed schools. But there was no debate at that time and it seems questionable whether this action represents a proper test of House sentiment.

Two facts stand out from these debates. The more obvious is that the Senate was sharply divided on the constitutionality of any bill to outlaw school segregation. But equally important is the general acceptance of the fact that school segregation was not unconstitutional of itself and that no court could so declare. Nowhere is it suggested that the judiciary in construing the 14th amendment might without more put school segregation outside the constitutional pale.

11.—FURTHER DISTRICT OF COLUMBIA SCHOOL LEGISLATION

During all of this period, when Congress debated so violently civil rights legislation applicable to the country as a whole, it was from time to time active in connection with the schools of the District of Columbia. We review here this evidence of the temper of Congress for the whole period from the ratification of the 14th amendment until the end of the tempestuous decade in 1875.

In 1868, the Senate passed without substantial debate a bill to transfer the duties of the trustees of the Negro schools in Washington and Georgetown to the trustees of the public schools. This bill was not designed to amalgamate the schools but simply to amalgamate the controlling trustees; the schools were to remain segregated. The House passed the bill in 1869 and sent it to the President. The President vetoed the bill, stating that its provisions were "contrary to the wishes of the colored residents of Washington and Georgetown." No further action was taken.

The great debate on segregated schools in the District began in February 1871. A bill was reported to reorganize the District schools, creating one board to assume the duties of the various school authorities. Section 6 of this bill in effect forbade any segregation in the revised school system.

Senator Patterson of New Hampshire moved to strike out the segregation ban. He thought that amalgamation "will tend to destroy the schools of the city. * * *" Sumner jumped into the fray; the anti-segregation provision was, to his mind, "the vital part of the bill." He made a long speech but, of course, no constitutional discussion was here appropriate. His supporters were to a large extent the radical southerners. Thus Senator Harris of Louisiana favored amalgamation although he commented that—

"We have not been able so far to operate [amalgamated] schools in our State very well. * * *"

Senator Sawyer of South Carolina thought Patterson's proposal "a retrograde step." Senator Revels of Mississippi considered that this amendment would encourage prejudice. Senator Wilson of Massachusetts also supported his colleague.

Patterson asserted, however, that his proposal was to leave the matter up to the local board for determination, expressing the view that it was—

"* * * doubtful * * * whether a majority of the colored people in this District desire this clause in the bill."

He was supported by Senators Tipton of Nebraska and Thurman of Ohio, the latter terming the proposal for forced mixture "tyrannical." Finally, Senator Hill of Georgia moved to amend Patterson's amendment to the effect that no distinction on account of race should be made in the method of education, thus leaving actual segregation permissible. Patterson accepted this proposal. But there the matter died; it was not, apparently, considered again during that session.

Sumner returned to the attack in 1872. He caused to be reported without amendment a bill to abolish the trustees of the colored schools established in 1862 and to require mixed schools in the District Discussion began on April 18, 1872. Sumner led off by asserting that the bill had been proposed at the request of the trustees of the colored schools. Senator Stockton of New Jersey began for the opposition. He said:

"I think in the condition the two races are before the law as you have placed them in this country we are bound to legislate on all subjects of legislation with equality toward them. * * * Whenever you come to interfere with any individual rights, with my right to say where my children shall go to school * * * you are then treading on the bounds of that civil liberty which our ancestors came to this country to establish."

Senator Bayard of Delaware opposed the bill and Senator Ferry of Connecticut proposed an amendment that would require an affirmative popular vote in the District before amalgamation would become mandatory. Sumner attempted time and again to get favorable action, and he was supported by Senator Edmunds of Vermont, an ardent radical, who said:

"It is a matter of great importance that we determine fairly and squarely whether in the District of Columbia, where we have the power, that we will exercise it in the protection of equal rights, or that we will not. * * *"

But Ferry of Connecticut reiterated his opposition to forced mixture, asserting that Sumner—

"* * * proposes a tyrannical rule from without, without consulting the sentiments of those within. * * *"

There again the matter died. Apparently, it never thereafter became a major issue. In 1874, Congress codified the laws relating to the District of Columbia. It specifically preserved the mandatory segregation requirements enacted in 1866; they are the statutes now under attack before this Court.

If the Congresses that first succeeded the ratification of the 14th amendment had considered that it expressed a firm policy against school segregation, it is inexplicable that they specifically refused to eliminate such segregation in the District of Columbia. Here was no question of constitutional power but solely one of policy; yet even then the considerations of policy were against the amalgamation of schools.

12.—THE FEDERAL AID TO EDUCATION BILL

Here is a small straw in the wind.

Early in 1872, the House considered a bill to give financial assistance to education in the States from the proceeds from the sale of public lands. The bill was silent on the question of school segregation. Some thought, however, that aid might be withheld from certain States because their schools were segregated. So an amendment was proposed to make it clear that aid should not be withheld for this reason. This amendment was adopted by the House by a vote of 115 to 81 on February 7, 1872. The

bill as so amended was passed by the House but did not receive Senate consideration.

13.—THE CIVIL RIGHTS ACT OF 1875

We now approach the climax of congressional action in the field of school segregation. Sumner's supplemental civil rights bill then came back before Congress to be dissected and disputed and finally to be passed after all reference to schools was excised.

This is a long and turbulent story. We cannot refer to all the speeches. We must pick and choose as we can for those most relevant to our question.

We turn first to the House. There in December 1873, a civil rights bill was favorably reported and taken under his wing by General Butler of Massachusetts. It provided:

"That whoever, being a corporation or natural person, and owner, or in charge of any public inn; or of any place of public amusement or entertainment for which a license from any legal authority is required; or of any line of stagecoaches, railroad, or other means of public carriage of passengers or freight; or of any cemetery, or other benevolent institution, or any public school supported, in whole or in part, at public expense or by endowment for public use, shall make any distinction as to admission or accommodation therein, of any citizen of the United States, because of race, color, or previous condition of servitude, shall, on conviction thereof, be fined * * *."

Debate began on December 19, 1873. Butler stated that the purpose of the bill was simply to override hostile State legislation. Mr. Beck of Kentucky led for the opposition. He thought the bill clearly unconstitutional and referred to the recently decided Slaughter-House cases. His view was that the—

"* * * rights pertaining * * * inferentially to common schools, are not embraced in the powers confided to Congress by the constitutional amendments."

Mr. Rainey, a South Carolina Negro, spoke for the bill, and debate went over until after the holidays.

It began again on January 5, 1874. Mr. Frye of Maine spoke in favor and was followed by Mr. Harris of Virginia in opposition. Mr. Stephens of Georgia, Vice President of the Confederate States of America, made a long opposing speech. There was, he said a—

"* * * want of necessary power, under the Constitution."

He spoke of the wartime amendments:

"Neither of these amendments confer, bestow, or even declare, any rights at all to citizens of the United States. * * *"

Of section 5, he said, in effect, that it simply authorized Congress to establish methods by which violations of the amendment might be determined by the courts.

He, as did many others, pointed to the distinction made in the Slaughter-House cases between the rights of a citizen of the United States and the rights of a citizen of a State; the right to education at the expense of a State was not, they considered, a right of a citizen of the United States.

Mr. Mills of Texas made a strong constitutional argument. He said:

"* * * the 14th amendment was adopted, not to enlarge the privileges and immunities already conferred, but simply to prohibit the States from abridging them as they existed. * * *

"From the authority of adjudged cases it is clear that the privileges and immunities mentioned in the 14th amendment are only such as are conferred by the Constitution itself. * * *"

His speech has been summarized as follows:

"Those rights and privileges which were conferred by the State, and without which they would not exist, were not fundamental, he declared, and were not, therefore, included among the rights guaranteed by the 14th amendment. The right to go to school was not fundamental, for schools could be closed entirely without abriding the rights of any citizen of the United States, which could not be done if it were a right conferred by the Constitution."

Mr. Elliott of South Carolina, a Negro, thought that there was—

"* * * not a line or word * * * in the decision of the Supreme Court in the great Slaughter-House cases which casts a shadow of doubt on the right of Congress to pass the pending bill. * * *"

Mr. Lawrence of Ohio made a strong argument in favor of the constitutionality of the bill. He based his argument to a major extent on the equal protection clause. He reviewed the Civil Rights Act of 1866 and the intent of Congress to make its constitutionality and effectiveness assured by proposing the 14th amendment. He concluded with an argument that Congress could act even though a State had not acted at all if Congress thought action necessary to protect equal rights.

The constitutional arguments were made by many. Of course, those opposed pointed to the fact that the enactment of the bill would destroy the newly formed southern educational systems because tax support would be eliminated. But that was an argument of expediency and not of constitutionality.

Finally, General Butler made another long and fiery speech and, on his motion, the bill was sent back to committee. It did not return during that session.

While all of this was occurring in the House, a similar battle was proceeding in the Senate. Sumner was on hand when the session began and his supplemental civil rights bill was the first bill introduced. On January 27, 1874, he tried to have the bill brought up for consideration without reference to committee. He detailed the history of the bill and asserted that committee consideration was unnecessary. Senators Ferry of Connecticut and Morrill of Maine urged reference to a committee, both stating their views that the bill was unconstitutional. Even Edmunds of Vermont, a stanch radical, argued against Sumner, and at last the bill was referred to the Committee on the Judiciary. It was reported favorably on April 13, 1874, but by that time Sumner had passed from the scene. As reported, the bill provided as follows:

"* * * all persons * * * shall be entitled to full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances * * * theaters, and other places of public amusement; and also of common schools * * *; and of cemeteries * * * subject only to conditions and limitations established by law, and applicable alike to citizens of every race and color. * * *"

In the absence of Sumner, Senator Frelinghuysen of New Jersey made the major speech in support of the bill. He referred to the Slaughter-House cases and in some way derived support. He mentioned the Iowa case holding segregated schools unconstitutional under the Iowa constitution and the Ohio case holding segregated schools constitutional under the Federal Constitution, and said that neither provided any satisfactory precedent. He said that the purpose of the bill was "to destroy, not to recognize the distinctions of race." He found constitutional support in the wartime amendments "considered together and in connection with the contemporaneous history," but particularly in the privileges and immunities and equal protection clauses. He added this unusual note:

"When in a school district there are two schools, and the white children choose to go to one and the colored to the other, there is nothing in this bill that prevents their doing so."

On April 30, 1874, Senator Norwood of Georgia made a speech of 2 hours. He presented a substantial constitutional argument; he could not find support in the Constitution for congressional regulation of schools. Senator Gordon of Georgia on May 5, 1874, moved to strike out school regulation. Senator Flanagan of Texas favored the bill, as did Senator Pratt of Indiana. Senator Thurman of Ohio made a strong constitutional attack on the bill. Senator Morton of Indiana asked him how Congress might enforce the 14th amendment in accordance with section 5. Thurman answered:

"Just precisely as it enforces the prohibition against a State that it shall not pass any law impairing the obligation of contracts. * * * It enforces it by providing for the making of a case for the judicial tribunals of the United States. * * *"

Thurman thought that section 5—

"* * * does not add one iota to the power of Congress."

But he was not misled by the meaning of the first section of the bill:

"* * * the meaning of the section is that there shall be mixed schools."

On May 21, 1874, Senator Johnston of Virginia spoke in opposition, stating that the bill was opposed by Virginia Republicans and Negroes. Senator Morton followed. He thought section 5 applicable and that Congress was the sole judge of the appropriateness of enforcing legislation. Senator Boutwell of Massachusetts supported the bill as authorized by sections 1 and 5 of the amendment.

Senator Stockton of New Jersey made a long speech extending into the session of May 22. He focused on the equal protection clause and supported the separate but equal doctrine; equal did not, in his view, mean the same. He thought the bill beyond constitutional bounds. He was followed by Senator Howe of Wisconsin who took the opposite position; he believed that the 14th amendment gave proper support. Next came Senator Alcorn of Mississippi who favored the bill because it was favored by the Negroes in his State and they controlled the government there. In regard to schools he said—

"I am not in favor of mixing them and I consider that this bill does not mix them."

He pointed out that schools were not mixed in Mississippi even though the Negroes were in control.

The debate went on; the Senate sat all night long. Senator Sargent of California proposed an amendment to permit segregation by sex or color. Senator Bogy of Missouri concurred with Thurman; the effect of the bill on education would be "demoralization and destruction." Senator Pease of Mississippi opposed the separate but equal doctrine and favored the bill. Senator Cooper of Tennessee thought that it would require amalgamated schools and was both inexpedient and unconstitutional. Senator Saulsbury of Delaware made a strong legal argument; he thought the bill an interference with the State police power and that the amendment—

"* * * was not adopted for any such purpose."

Senators Kelly of Oregon, Merrimon of North Carolina and Hamilton of Maryland all opposed the bill on constitutional grounds.

Senator Stewart of Nevada stated that he believed that Congress had the constitutional power to pass the bill but that it would not result in better education for the Negro. He said:

"I do not think at all events we should take the step to compel mixed schools."

He added that the bill was designed to get Negro votes for the Republican Party.

As the debate ended, Senator Frelinghuysen noted that separate schools might be retained on a voluntary basis, and Senator Sargent of California expressed the view

that the 14th amendment of itself certainly did not require mixed schools.

All substantial amendments were voted down. The bill was put upon its passage and passed by a vote of 29 to 16. The Senate adjourned at 7:10 a.m. The bill was never presented for action in the House.

In the election of November 1874, the Democratic Party made sweeping gains, unseating almost 100 Republican House Members. As a result, when the lame duck Congress met in December 1874, the Republicans were particularly anxious for some form of civil rights legislation to be enacted while they retained control. On December 16, 1874, General Butler, himself a lame duck, reported the civil rights bill in amended form. As amended, the bill provided that segregated schools might be maintained so long as they provided "equal educational advantages in all respects." The Republicans then succeeded in modifying the rules of the House in an attempt to restrain filibusters so that passage of the bill might be assisted. Two days after this was done, the House voted to reconsider the vote by which the bill had been recommitted. The debate then began. Mr. Cessna of Pennsylvania moved to substitute the language of the Senate bill. Mr. White of Alabama sought to add a proviso making even more certain the validity of mixed schools. Mr. Kellogg of Connecticut proposed the elimination of all reference to schools. Butler spoke at length; his bitterly antisouthern remarks aroused protest. Mr. Lynch joined in support of the bill, stating that the 14th amendment authorized the elimination of all color distinctions.

Mr. Finck of Ohio spoke in reply. He thought that the bill was unconstitutional, citing the Ohio decision and the Slaughter-House cases. He did not believe that comfort could be obtained from section 5 of the 14th amendment:

"I deny that the fifth section of the 14th amendment confers any express power upon Congress whatever."

Mr. Hale of New York disagreed with Mr. Finck; he considered that section 5 authorized affirmative congressional action of the type embodied in the bill.

We cannot recount within any reasonable limit of space all of the speeches on the bill. Many opposed, and most of them combined arguments of constitutional law with those of expediency. Many were in favor of the bill and answered the arguments of its opponents on the same grounds. But their arguments could only cover territory that we have already traversed; there was nothing new to tell.

In the end, Cessna's and White's amendments were rejected. Kellogg's amendment—to eliminate all reference to schools—was accepted by a very large majority, 128 to 48. As the one who proposed the amendment, his words are of interest. He thought that to require mixed schools would —

"* * * destroy the schools in many of the Southern States.

But he went further than this:

"And besides, this matter of schools is one of the subjects that must be recognized and controlled by State legislation. The States establish schools, raise taxes for that purpose, and they are also aided by private benefactions; and they have a right to expend the money, so raised, in their own way."

After the adoption of Kellogg's amendment, the bill passed the House early in the morning of February 5, 1875, by a vote of 162 to 99. It then went to the Senate. There, the absence of school regulation was not mentioned. The discussion related almost entirely to a provision regarding jurors. Thurman, Bayard, Carpenter, Dennis, and Hamilton opposed the bill; Boutwell and Morton supported it. It was passed by the Senate on February 27, 1875, by a vote of 38 to 26, and signed by President Grant on March 1, 1875.

Charles Sumner, had he lived, would have been bitter at the thought that Congress had refused to pass any law at all relating to segregation of the races in the public schools. But the crowning blow came even later; that occurred when this Court declared that his Civil Rights Act, bobtailed as it emerged from the congressional maelstrom, offended the Constitution of the United States.

With Democratic control of Congress, civil rights legislation ceased to be of active concern. But one further footnote must be added. President Grant apparently did not believe that segregated schools were outlawed. When he sent to Congress his message when it convened in 1875, he was concerned about education. He recommended a constitutional amendment making it the "duty" of each State "to establish and forever maintain free public schools * * * irrespective of sex, color, birthplace, religions. * * *" It seems clear that no reference to color would have been required if the 14th amendment had already made the result clear.

14.—CONCLUSION

Of the questions that we have here investigated, one is subject to a definite answer. The Congress that proposed the 14th amendment did not consider that, of itself, it made segregated schools unconstitutional.

This conclusion is easily derived. Almost all agreed that the amendment was designed to write the Civil Rights Act of 1866 into the Constitution of the United States; some said that the purpose was to make that act constitutional and others to prevent its repeal, but all agreed on the object. The leader of those who succeeded in enacting the civil rights bill stated specifically on two occasions that it was not designed to require mixed schools and the statements of its other proponents are consistent with his position. In the succeeding years, many efforts were made to enact a statute outlawing segregated schools but none was successful. These attempts, nourished by those who led the struggle for the 14th amendment, are absolutely inconsistent with any view that school segregation was already unconstitutional.

Could this Court act in the future of its own initiative? That thought never crossed a mind. If anything, the radical leaders were hostile to a Court that, compared to them, was conservative. The answer to this question can be derived from inference only but there is no evidence to support an affirmative position.

Finally, did those Congressmen believe that Congress could properly act to make school segregation illegal? There the evidence is sharply divided. The Congress that proposed the 14th amendment itself gives no answer to the question. In succeeding Congresses, at one time or another, a majority in the Senate and perhaps in the House would have said yes. But many would have replied with an emphatic negative and they were always equally vocal. The best answer to this question is that no Congress was ever able to muster a majority willing to take the step of outlawing school segregation. And the chief proponent of congressional action based his constitutional position on a ground that seemed then and seems now completely unsound to all.

In conclusion, one comment must be made. In reviewing the congressional history, one is always struck by the feeling that it has all been read before. Then the reason becomes apparent. All of the arguments—both for and against segregated schools—which are now being presented, whether they be legal, psychological, or sociological, were made in the 1870's, and often in the same words. There is nothing new; the field has been fully explored. This, we consider, makes it all the more clear that what we face is a local legislative and not a judicial problem.

APPENDIX B

THE FOURTEENTH AMENDMENT BEFORE THE STATES

A.—INTRODUCTION

The 14th amendment was proposed by Congress on June 13, 1866, and was submitted to the States for ratification on June 16, 1866. A final proclamation that the amendment had been ratified was issued by the Secretary of State on July 28, 1868. In this period of slightly more than 2 years and in the 2 years next succeeding, the amendment came before the legislatures of each of the 37 States then in the Union.

In seeking for evidence as to the relationship between the amendment and school segregation, we must look to two chief sources. The first is what was said directly about the amendment at the time that its ratification was unaer consideration, either by the Governor or some other executive official or by members of the legislatures. As to the latter, we are hampered by the fact that only in Indiana and Pennsylvania are there reports of legislative debates, and even then we must be wary of statements by those who opposed the amendment for their opinions as to its effect often went enthusiastically beyond the aims of those who favored it.

The second source of information comes from the school systems themselves. If segregated school systems existed both before and after the ratification of the amendment, it seems to us clear that the legislature did not contemplate that the amendment of its own force outlawed segregation in the schools. The same is true if the same legislature or one immediately subsequent enacted legislation providing for segregated schools. On the other hand, legislation not providing for segregated schools does not have the same force; the legislature may have thought that the amendment required amalgamated schools, but equally it may itself have desired amalgamated schools without regard to the amendment.

In this connection, we do not understand the apparent distinction made by appellants between States where segregation was mandatory and States where the legislature permitted local option. If segregation could be made mandatory by local authorities, it is, so far as that locality is concerned, just as if the legislature itself had made segregation mandatory. A legislature that considered that, as a result of the 14th amendment, school segregation offended the Constitution, could no more authorize segregation by local option than it could make segregation universally mandatory. We consider it impossible to distinguish mandatory and permissive segregation.

Furthermore, we note that in certain States there is no relevant evidence in the school reports. One main reason for this is that no substantial Negro problem existed in those States. That is apparent from the census figures for 1870, the nearest available census. A table taken from this census is reprinted on the next page. In Minnesota, for example, there were only 759 Negroes in 1870; it is idle to think that segregated education would even have been considered there. No evidence can be derived from the facts of the school system in such States.

Finally, we must disregard generalized statements. He who stated that the purpose of the amendment was to preserve liberty and equality for all the people cannot, we conceive, be taken to have meant that segregated schools were to be forever abolished. The statement must hit closer to the mark before it can be considered relevant.

In the discussion that follows, we make no attempt at argument. We seek merely

to recount the facts as to each State, taken in alphabetical order only for convenience of reference. Before turning to the individual States, however, we must refer briefly to the peculiar circumstances general to all of the States in the South.

B.—THE SECEDING STATES

The States that seceded from the Union present a particularly difficult problem, and we outline here that problem in a manner applicable to all of them.

In 1866, when the 14th amendment was submitted to the States for ratification, there existed in these 11 Southern States governments which had been established pursuant to the reconstruction program of the President. They were comparatively representative of all the people. Although Congress had refused the readmission of the Senators and Representatives from these States, and the Freedmen's Bureau was active in them, no substantial action had been take to eliminate local self-government.

During the period between proposal and ratification of the 14th amendment, Congress took a very drastic step. On March 2, 1867, the House and Senate enacted over the veto of President Johnson "An act to provide for the more efficient government of the Rebel States." This act recited that legal State governments did not exist in the former Confederate States and that provision for "peace and good order" in those States was necessary until "loyal and republican" governments could be established. It therefore divided the South into five military districts to be commanded by officers of the Army who were empowered to use such means as they thought necessary to protect persons and property.

Section 5 of the statute provided the mechanics for the readmission to Congress of Senators and Representatives from the seceding States. There were two basic conditions. The first was that a new constitution should be framed for each State by a convention elected by all male citizens 21 years of age or more regardless of race, except felons and those who had participated in the "rebellion," that this constitution should provide for suffrage for all qualified to elect delegates to the convention and that Congress should approve the constitution. The second condition was that the first legislature elected under the new constitution should ratify the 14th amendment and that the 14th amendment should have become a part of the Constitution of the United States. This section continued by excluding from the franchise all those excluded from holding office by the third section of the 14th amendment. Section 6 of this statute proclaimed that, until each State had been readmitted to representation in Congress, its civil government should be deemed provisional only.

Pursuant to this act the existing governments in the Southern States were overthrown and new governments were established. A very large percentage of the whites were excluded from participation in these governments and, in several instances, dominion was placed completely in the hands of those who, but a short time ago, had been in servitude.

Naturally, each of the legislatures so elected promptly ratified the 14th amendment. There was no real alternative; either the amendment was ratified or the State continued in a position of military subjugation without local self-government. Any evidence on the question here under consideration derived from these 11 States is thus of diminished significance. In most of them the 14th amendment was ratified to procure readmission to the Union and little consideration was given by the ratifying legislatures to the particular effect that ratification would have on local rights.

U.S. population (1870)

	Aggregate	White	Colored
STATE			
Alabama	996,992	521,384	475,510
Arkansas	484,471	362,115	122,169
California	560,247	499,424	4,272
Connecticut	537,454	527,549	9,668
Delaware	125,015	102,221	22,794
Florida	187,748	96,057	91,689
Georgia	1,184,109	638,926	545,142
Illinois	2,539,891	2,511,096	28,762
Indiana	1,680,637	1,655,837	24,560
Iowa	1,194,020	1,188,207	5,762
Kansas	364,399	346,377	17,108
Kentucky	1,321,011	1,098,692	222,210
Louisiana	726,915	362,065	364,210
Maine	626,915	624,809	1,606
Maryland	780,894	605,497	175,391
Massachusetts	1,457,351	1,443,156	13,947
Michigan	1,184,059	1,167,282	11,849
Minnesota	439,706	438,257	759
Mississippi	827,922	382,896	444,201
Missouri	1,721,295	1,603,146	118,071
Nebraska	122,993	122,117	789
Nevada	42,491	38,959	357
New Hampshire	318,300	317,697	580
New Jersey	906,096	875,407	30,658
New York	4,382,759	4,330,210	52,081
North Carolina	1,071,361	678,470	391,650
Ohio	2,665,260	2,601,946	66,213
Oregon	90,923	86,929	346
Pennsylvania	3,521,951	3,456,609	65,294
Rhode Island	217,353	212,219	4,980
South Carolina	705,606	289,667	415,814
Tennessee	1,258,520	936,119	322,331
Texas	818,579	564,700	253,475
Vermont	330,551	329,613	924
Virginia	1,225,163	712,089	512,841
West Virginia	442,014	424,033	17,980
Wisconsin	1,054,670	1,051,351	2,113
TERRITORY			
Arizona	9,658	9,581	26
Colorado	39,864	39,221	456
Dakota	14,181	12,887	94
District of Columbia	131,700	88,278	43,404
Idaho	14,999	10,618	60
Montana	20,595	18,306	183
New Mexico	91,874	90,393	172
Utah	86,786	86,044	118
Washington	23,955	22,195	207
Wyoming	9,118	8,726	183
Total States	38,115,641	33,203,128	4,835,106
Total Territories	442,730	386,249	44,903
Total United States	38,558,371	33,589,377	4,880,009

Source: 9th Census of the United States—Statistics of Population (Government Printing Office, 1872) Table 1. 63,254 Chinese and 25,731 Indians are not included in Columns III and IV.

But appellants have gone on to charge that, in effect, many of the seceding States perpetrated a gigantic fraud on the United States. They adopted constitutions, it is said, designed to establish general school systems which stated nothing about segregation. By doing this, it is alleged, they recognized that the 14th amendment was designed to outlaw school segregation. Their purpose was to secure readmission of their Representatives in Congress. Then, the Representatives having been so readmitted and the States having escaped congressional control, their legislatures, despite their knowledge that school segregation was unconstitutional, immediately established segregated schools.

This assertion is without support in fact. It is based on the assumption that the legislators of many States, all sworn to uphold the Constitution of the United States, willingly and knowingly violated their oaths at once and enacted legislation in bad faith which they knew to be unconstitutional. A mere statement of such a theory is enough to show how far from the truth it must be.

Even more, the assumption has no force in logic. The legislatures that ratified the amendment in the Southern States were not composed of diehard Confederates still devoted to rebellious causes; in almost every case, they were made up of a majority of loyalists, northern adventurers and Negroes. The Governors who recommended school segregation came from as far away as Maine. Legislatures so composed would have no reason to engage in the chicanery which appellants assume.

One further fact is important. In certain instances, these legislatures were permitted to ratify the amendment and then to take no further action until Congress had acted to readmit their Representatives. Thus in Florida, the legislature followed the advice of the Governor and, after ratifying the amendment (and the 13th amendment) and electing Senators, adjourned until readmission had received congressional approval. That was because, until Congress had acted, the action of the legislature, under the Reconstruction Act, could be only provisional. So the legislature that ratified the amendment could not in this instance have acted in regard to schools before readmission.

Finally, what Congress had done was not kept from the States, south or north. Congress had fostered school segregation in the District of Columbia. Congressional leaders had made it clear that the amendment was not designed to abolish school segregation. Southern leaders knew these facts; they relied on them in good faith as they were entitled to do.

We reject the obnoxious proposition advanced by appellants and are confident that the Court will reject it. Where a legislature ratified the amendment and thereafter established segregated schools, either on a mandatory or a permissive basis, we conclude that, without regard to intervening readmission of Representatives to Congress, the legislature did not consider that the amendment abolished school segregation.

We turn now to the individual States.

C.—THE INDIVIDUAL STATES

1.—ALABAMA

The Governor of Alabama submitted the amendment to the legislature on November 12, 1866, recommending its rejection, and the legislature promptly followed his recommendation, the vote in the senate being 21 to 9 and in the house 52 to 33. One month later the Governor changed his mind; he thought that only by ratification could Alabama obtain readmission of its Senators and Representatives in Congress. But the legislature refused this recommendation and rejected the amendment by larger majorities than before. In none of the records of these proceedings is the school system mentioned.

The Alabama government was then reorganized under Federal military rule. A new constitution of 1868 was adopted; this did not require segregated schools, but instead directed the authorities to establish in each school district "one or more schools." The amendment was promptly ratified by overwhelming majorities, 67 to 4 in the house and unanimously in the senate. In neither house was the matter debated at all.

The amendment was ratified on July 13, 1868. Less than a month later, the same legislature on August 11, 1868, adopted a general school law. This statute required segregated schools unless all parents consented to amalgamation. Schools were then established, but only on a segregated basis, though the first steps for the Negro schools were slow. Segregation was made mandatory in the next constitution adopted in 1875. Segregated education continues to this day.

The 14th amendment and segregated education were adopted contemporaneously by the same legislature in Alabama; it must have thought that segregation did not offend the amendment.

2.—ARKANSAS

Arkansas, like all the other States that seceded, promptly rejected the 14th amendment when it was first presented. Committee reports are available in both houses

and objections to the amendment were stated in detail, but no indication is given that the amendment would make school segregation unconstitutional. The same legislature adopted a statute "to declare the rights of persons of African descent," by which segregation in the public schools was specifically required.

The military constitutional convention met in Little Rock on January 7, 1868, and adopted a constitution that was ratified by the people on March 13, 1868. It provided for the establishment of a system of free schools for the instruction of all and contained a provision quite similar to section 1 of the 14th amendment. The military legislature, elected pursuant to this constitution, ratified the 14th amendment, the vote being unanimous both in the senate and in the house.

The 14th amendment was ratified on April 6, 1868. On July 23, 1868, the same military legislature passed a statute to establish the public school system. Section 107 of this statute directed the State board of education to "make the necessary provisions for establishing separate schools for white and colored children." Segregation was continued by the next school law enacted in 1873.

Let us now comment on appellants' discussion of Arkansas. They report that the 1868 constitution which did not require segregation "was adopted to nullify" the segregation law of 1867 (brief, p. 143); they quote an authority that does not support this statement. They say that the 1867 law was repealed prior to readmission of Arkansas Representatives to Congress; there is nothing in the record to support this statement. They imply that an unsegregated law was then proposed; nothing supports this statement. No school law or amendment was passed before July 1868, a time after readmission, and it was done on the recommendation of the Republican Governor who came from Pennsylvania and Kansas.

Since the same legislature that ratified the 14th amendment adopted segregated schools, we consider that there is affirmative evidence that in Arkansas the 14th amendment was not considered to require the abandonment of school segregation.

3.—CALIFORNIA

California never ratified the 14th amendment. The house elected in 1867 was strongly Democratic and the new Democratic Governor was firmly opposed to the reconstruction policy of Congress. The house received a report recommending rejection of the 14th amendment. The senate, which remained under Republican control, received a report from its committee recommending ratification. The houses were thus at a deadlock and nothing further was ever done.

All during this period California's school system, first established pursuant to its constitution of 1849, permitted segregated schools. Thus the superintendent of public instruction in 1867 spoke of the establishment of separate schools for other than white children as one of the more important improvements recently effected in the school laws. In the same report he stated:

"The people of this State are decidedly in favor of separate schools for colored children."

Provisions for separate schools for Negroes and others of color were enacted by the California Legislatures in 1863, 1864, 1866, and 1870. All of these statutes provided that Negro children should not be admitted to white public schools but that separate schools should be established for them under conditions specified in the acts.

California thus had provisions for segregated education all during the Reconstruction period. Even though California refused to ratify the 14th amendment, it is clear that its legislature did not consider that the fact that the amendment had become a part of the Constitution required disregard of the laws providing for segregated schools.

4.—CONNECTICUT

Connecticut was the first State to ratify the 14th amendment. The legislature was in session in 1866 when the proposed amendment was communicated by the Secretary of State. The Governor recommended its ratification and this was done without extended discussion in the senate on July 25, 1866, by a vote of 11 to 6 and in the house on the next day by a vote of 131 to 92.

The public school system in Connecticut dates back to 1644. As early as 1818 legislation to protect the school fund was enacted. A statute of 1835 prohibited the establishment of schools for Negroes who were not inhabitants of Connecticut. As appellants show (brief, p. 159), segregated schools were authorized by law in parts of Connecticut as late as 1867 after its ratification of the amendment. But in 1868 the legislature outlawed segregation in schools on account of race or color.

In 1865, the Connecticut voters turned down an amendment to its constitution giving Negroes the right to vote. A similar statutory prohibition against Negro voting was not repealed until 1871. The constitutional provision had not been removed when the adoption of the 15th amendment made it inoperative.

Connecticut had few Negroes during this period. There is nothing to indicate that the adoption of the 14th amendment had any relation to school segregation in Connecticut.

5.—DELAWARE

Delaware is another State that refused at first to ratify the 14th amendment. The Governor in his inaugural address on January 15, 1867, pointed to the danger of encroachment on the rights of the State governments which he thought inherent in the amendment. Subsequently, the amendment was rejected by the Delaware House by a vote of 15 to 6 and by the Senate by a vote of 6 to 3. Delaware ratified the amendment more than 30 years later in 1901.

The Delaware constitution of 1831 directed the legislature to establish schools and prior to the war the legislature provided free schools for all white children. Schools for Negro children after the Civil War were supported by contributions voluntarily made by the Negroes and donations by the Delaware Association of Colored Schools. It was not until 1881 that the first direct appropriation from the State treasury was made for the benefit of Negro schools. Segregation in the schools was permitted by a statute enacted in 1874. The constitution of 1897, in effect when Delaware ratified the amendment in 1901, required the maintenance of separate schools.

It is clear that Negro children were not admitted to the white public schools in Delaware during the Reconstruction period. Ratification of the 14th amendment was not considered to abolish school segregation.

6.—FLORIDA

The Governor of Florida on November 4, 1866, recommended rejection of the 14th amendment in a message of some length that does not refer to school segregation. In both houses long committee reports were returned, but there is no mention of schools except that in the house report it is stated that a separate school system had been established for the Negroes although there was no public school system for the whites. Both houses unanimously rejected the 14th amendment in the first few days of December 1866.

In 1868, under the pressure of the Reconstruction Act, Florida adopted a new constitution which neither required nor prohibited segregation. The 14th amendment was ratified on June 9, 1868. Again nothing was said about schools.

The report of the superintendent of public schools for freedmen for 1866 noted that there were in existence 35 day schools and 30 night schools for Negroes with 2,700 pupils. These were the schools for Negro children supported by Florida at a time when there were no schools for white children. A uniform system of public schools was the subject of a bill introduced in the legislature of 1868, the same legislature that ratified the 14th amendment. The bill passed the house without mention of segregated schools. In the senate, an amendment to require segregation was adopted but the bill was never passed. A general school law was enacted in 1869. Nothing is contained in this act or in the constitution of 1868 requiring school segregation. Segregation was prohibited by statute in 1873. But, according to the attorney general of Florida, this statute was not enforced in practice, and segregated schools were the general custom. School segregation was not required by law until a new Florida constitution became effective in 1887.

There is no affirmative evidence that ratification of the 14th amendment was considered in Florida to outlaw segregation in the schools.

7.—GEORGIA

The 14th amendment was presented to the Georgia Legislature by the Governor on November 1, 1866, in a speech in which he opposed ratification. It was accordingly rejected by a vote of 147 to 2 in the house and 38 to 0 in the senate.

The government of Georgia was then reorganized under military rule. A new constitution was adopted in 1868. As the article on education was proposed, it would have permitted segregation in the schools. As adopted, the article on education was simplified and no mention of segregation was made. Provisional Governor Bullock recommended ratification of the 14th amendment to the first legislature assembled under this constitution on July 24, 1868. Ratification was accomplished by a vote of 89 to 69 in the house and 27 to 14 in the senate. Congress did not, however, recognize this ratification since Negroes had been excluded from their seats in the 1868 legislature. At the 1870 session the Governor called on the legislature to ratify the 14th amendment again and to ratify the 15th amendment at the same time. The legislature ratified the 14th amendment again by a vote of 71 to 0 in the house and 24 to 10 in the senate.

Bullock was a Republican and a majority in both the senate and house at the 1870 session were Republicans. Furthermore, it was at this same session that the first law establishing a system of public schools in Georgia was enacted. This school act provided that—

"* * * the children of the white and colored races shall not be taught together in any subdistrict of the State."

An amendment to eliminate this provision was proposed in the house and rejected.

The legislature that ratified the 14th amendment also enacted a school law providing for segregated schools. Certainly this legislature could not have thought that the 14th amendment forbade it to establish separate schools for the races.

8.—ILLINOIS

Governor Oglesby recommended ratification of the 14th amendment when the Illinois Legislature met in 1867, stating that the amendment had received "emphatic approval and endorsement by the people of the State." The amendment was ratified by the senate on January 10, 1867, by a vote of 17 to 8 and by the house on January 15, 1867, by a vote of 62 to 25. There is nothing in the official publications or in the current newspaper

reports to indicate any intention by the legislature to affect the public schools.

In the report of the superintendent of public instruction for 1865–66, he notes that there were in Illinois 6,000 Negro children of school age for whom no schools were provided because the law did not contemplate their amalgamation with white children. In his report for the subsequent biennium, the superintendent said:

"The question of coattendance, or of separate schools, is an entirely separate and distinct one, and may safely be left to be determined by the respective districts and communities, to suit themselves. In many places there will be but one school for all; in many others there will be separate schools. This is a matter of but little importance, and one which need not and cannot be regulated by legislation."

This view apparently was generally shared among Illinois officials. The Illinois constitution of 1870 required education for all children but made no provision for segregated or mixed schools. The Governor in his message to the legislature in 1871 urged it to implement this provision and to provide public schools for all children. In the course of this message he stated:

"The question whether children of different complexions shall be admitted to and instructed in the same school is one of mere local and temporary interest, and may be safely left to those who vote and pay the taxes."

Illinois did not end separate school systems until 1874. It seems clear that the Legislature of Illinois did not consider that the ratification of the 14th amendment required it to abolish school segregation.

9.—INDIANA

Governor Morton of Indiana delivered his message to the legislature on June 11, 1867. He spoke both of schools and of the 14th amendment. On the subject of schools he said:

"The laws of Indiana exclude colored children from the common schools, and make no provision whatever for their education. I would, therefore, recommend that the laws be so amended as to require an enumeration to be made of the colored children of the State, and such a portion of the school fund as may be in proportion to their number, be set apart and applied to their education by the establishment of separate schools, under such suitable provisions and regulations as may be proper. I would not recommend that white and colored children be placed together in the same schools, believing, as I do, in the present state of public opinion, that to do so would create dissatisfaction and conflict, and impair the usefulness of the schools * * *."

He spoke in generalities as to the amendment and recommended its ratification.

The amendment was debated at some length The Republicans asserted that the people had already voted in favor of its ratification and that a vote should be taken at once. The Democrats spoke in opposition to the amendment both in the house and in the senate. There was much talk that the amendment would confer the right of suffrage upon the Negro (although it took the 15th amendment to make this clear) and one opponent stated that the Negroes "would sit with us in the jury box and with our children in the common schools." But to the objection that the first section of the amendment merely repeated the principles of the Civil Rights Act of 1866, one of the amendment's supporters replied that those principles should be made permanent by writing them into the fundamental law. None of those who spoke in favor of the amendment indicated that it would have any effect upon the school system. It was adopted in the senate by a vote of 29 to 16 and in the house by a vote of 55 to 36.

The school law of 1865 excused Negroes and mulattoes from payment of the school tax for no schools were provided for their children. That school law had been limited to include only white children by an amendment, the purpose of which was to "gain friends and get the best school laws we can."

No amendment to the school law of 1865 was successful at the 1867 session, although a bill to provide, separate schools for Negroes when any taxpayer objected to their admission to the white schools was passed by the senate.

The 1865 law was, however, changed in 1869 when taxation for common school purposes was made uniform and the education of Negro children was provided for in separate schools. Extended debates are found on this statute. This debate does not indicate that the 14th amendment at any time entered into the consideration of the legislators. Some opposed educating the Negro at all; some were for separate schools because they believed that the Indiana constitution required education for the Negro; and some wanted to have amalgamated schools because they considered segregated schools a violation of the Indiana constitution. But none indicated that he believed that segregated schools violated the 14th amendment.

Segregated schools were made permissive by a further statute of 1877.

In Indiana we have for the first time an assertion that the 14th amendment did outlaw school segregation. It was made by a member of the minority who obviously intended to paint as black a picture of the amendment as could possibly be described. On the other hand, Indiana had excluded Negroes from the public schools before the 14th amendment and immediately thereafter established separate Negro schools. We think it clear that the Indiana Legislature considered that it created no constitutional prohibition of separate schools when it ratified the 14th amendment.

10.—IOWA

Iowa did not consider the amendment until 1868. At the opening of the legislature in that year, the Governor referred to the amendment in general terms and recommended its ratification. The new Governor, in his inaugural address a few days later, noted the fact that the Iowa constitution had abolished all distinction on the basis of race and color and asked for the vote for the Negro. The amendment was ratified in Iowa with ease by a vote of 68 to 12 in the house and 34 to 9 in the senate.

The Iowa constitution of 1857 required the board of education to provide schools for all of the children of the State. In 1858 the legislature required the district school board of directors to provide separate schools for Negro children unless all parents in the district agreed to amalgamation. The superintendent of public instruction considered this statute offensive to the State constitution as impinging on the duties of the board of education. In fact, a similar law had earlier been held by the Supreme Court of Iowa to offend the State constitution. Segregated education, when attempted after the 14th amendment came on the scene, was held to violate Iowa's statutes, but no mention at any time was made of the 14th amendment.

There is no evidence from Iowa on the point here in question.

11.—KANSAS

Governor Crawford recommended ratification of the 14th amendment to the Legislature of Kansas that met on January 8, 1867. He stated that the amendment had been approved by the people at the preceding election, and he asked for a unanimous vote. The Governor did not mention schools. The senate did ratify the amendment unanimously, and the house approved by a vote of 76 to 7.

Ratification of the amendment was accomplished by the legislature of 1867; the same legislature authorized segregated schools in cities of the second class and the legislature of 1868 authorized segregated schools in cities of the first class. The second statute gave to boards of education in cities of the first class the right "to organize and maintain separate schools for the education of white and colored children." This act was passed by the house by a vote of 72 to 1, more nearly unanimous than the vote on the 14th amendment, and was unanimously adopted by the Senate. Such permissive segregation has continued at all times since it was originally adopted except for the 3-year period between 1876 and 1879.

The Legislature of Kansas certainly did not consider that ratification of the 14th amendment abolished the power of the State to segregate schools by race or color.

12.—KENTUCKY

The Governor of Kentucky recommended rejection of the 14th amendment when he sent it to the legislature on January 3, 1867. He did not discuss its merits. The amendment was rejected by the house by a vote of 67 to 27 and by the senate by a vote of 24 to 9. Nothing in these proceedings gives any indication that school segregation was an issue. Kentucky never considered the amendment again.

The same legislature enacted a statute permitting the establishment of schools for Negroes to be supported by taxes collected from Negroes. Additional legislation on this subject was recommended by the Governor to the legislature in 1871.

The constitution of 1891 required segregated schools. In fact, no real system of Negro education existed prior to 1882, and schools in Kentucky have been segregated ever since education of the Negro was begun.

It is clear that Kentucky did not consider the effectiveness of the 14th amendment to outlaw school segregation.

13.—LOUISIANA

The situation in Louisiana in the years immediately following the war can only be described as chaos. The Governor in 1867 recommended adoption of the amendment, but he was a Union man and stated that the legislature would probably disagree with him. Even he sought separate schools for Negro children in this same address. The Governor was correct in his forecast; the 14th amendment was rejected unanimously by both houses of the 1867 legislature.

Then came reconstruction. A provisional Governor was appointed "in obedience to instruction from the general commanding the army." The new legislature of 1868, composed mainly of Negroes, enthusiastically adopted the amendment. The vote was 57 to 3 in the house and 22 to 11 in the senate.

In the same year Louisiana adopted a new constitution. This provided that there should be no segregation in the public schools. The journal of this convention is interesting. The provision in regard to education was adopted by a vote of 61 to 12, and a number of the members went to some lengths to express the reason for their vote. Not one of them mentions the 14th amendment.

The result of this constitutional provision was confusion and riot. No effective schools were established while this constitution was in effect. The requirement for mixed schools was eliminated 9 years later by the Louisiana constitution of 1879, and since that time segregated schools have generally existed in Louisiana.

It is difficult to derive any intention from the Louisiana record. It may best be summed up by saying that no affirmative evidence exists that the 14th amendment

was considered to have placed school segregation beyond the constitutional pale.

14.—MAINE

There is little to be gleaned from Maine. The Governor recommended ratification of the 14th amendment in generalities, and a resolution to that end was adopted by overwhelming votes, 126 to 12 in the house and unanimously in the senate.

Negroes constituted approximately one-quarter of one percent of the Maine population at this time and Maine never required segregation in its public schools.

15.—MARYLAND

Maryland never ratified the 14th amendment. The Governor submitted it to the legislature in 1867 without mention of education, and no reference to the school system is found in the lengthy report of the Joint Committee on Federal Relations to which the amendment was referred. The senate rejected the 14th amendment by a vote of 13 to 4 and the house took similar action by a vote of 47 to 10. No further action on the amendment was ever taken in Maryland.

In Maryland, as in a number of other States, the educational issue of the times was not whether the Negroes should have separate schools, but whether they should be educated at all. In the Maryland constitutional convention of 1864, it was made clear that the delegates thought that education for the Negro was not yet appropriate although a separate system for his education might be appropriate in the future. The superintendent of public instruction recommended separate schools for Negroes in his report of 1865.

Maryland held another constitutional convention in 1867. No requirement for segregation is contained in the constitution then drafted, but the debates make it clear that amalgamated schools were so far from the minds of the Maryland people that the delegates did not think them even necessary for discussion, much less prohibition.

The first comprehensive school system was set up by a law effective April 1, 1868. This statute provided that free schools should be available to all white children between 6 and 18 and continued as follows:

"The total amount of taxes paid for school purposes by the colored people of any county, or in the city of Baltimore, together with any donations that may be made for the purpose, shall be set aside for maintaining the schools for colored children; and such schools shall be subject to such rules and regulations as the local school boards may prescribe."

The establishment of segregated schools was substantially contemporaneous with consideration of the 14th amendment in Maryland. We think it clear that Maryland did not consider that the fact that the amendment became a part of the Constitution prohibited school segregation by race. Such segregated schools still exist in Maryland.

16.—MASSACHUSETTS

The Governor of Massachusetts, in an address on January 4, 1867, recommended ratification of the 14th amendment. The Governor reviewed the amendment in some detail but mentioned no relationship to the school system. With reference to the first section of the amendment, he observed that it was advisable thus to incorporate the Civil Rights Act in the Constitution. The Committee on Federal Relations of the house returned two reports; the majority recommended that the amendment be rejected on the ground that it did not go far enough, stating that—

"* * * this first section is, at best, mere surplusage * * *."

while the minority thought that the amendment was an—

"* * * advance in the direction of establishing unrestricted popular rights * * *."

The amendment was nevertheless ratified by the house on March 15, 1867, and by the senate on March 20, 1867.

The city of Boston had separate schools for Negroes in 1827, pursuant to a regulation of its school committee, and this segregation was held inoffensive to the Massachusetts constitution in *Roberts* v. *City of Boston*, 5 Cush. 198 (1849). Segregated education was prohibited by statute in Massachusetts in 1855.

We conclude that no evidence on the question here under consideration can be derived from the Massachusetts history.

17.—MICHIGAN

The 14th amendment was discussed by the Governor in his message to the Michigan Legislature of January 2, 1867, in which he describes the purposes of the amendment but makes no mention of schools. Ratification was accomplished swiftly. In the senate the vote was 25 to 1 in favor of ratification on January 15, 1867, and in the house the vote was 77 to 15 on the next day. The newspapers of the time reported little of the proceedings.

Separate schools for Negroes were established in Detroit as early as 1839 and continued until the late sixties. In 1867 Michigan passed a statute relating to schools containing the following provision:

"SEC. 28. All residents of any district shall have an equal right to attend any school therein * * *."

The parents of a Negro child in Detroit sought a writ of mandamus to require his admission to a white school. This action came before the Supreme Court of Michigan in 1869. Chief Justice Cooley determined that the writ should issue on the basis of the 1867 statute. His opinion is a substantial one, but the 14th amendment is not mentioned. Provisions explicitly forbidding segregation were adopted in 1871.

We conclude that there is no evidence that Michigan considered that the 14th amendment outlawed segregation.

18.—MINNESOTA

Minnesota is one of the six States that had a Negro population of less than 1,000. Segregation was never a problem there, and the evidence at hand is nonexistent.

The Governor recommended ratification of the 14th amendment on January 10, 1867, in the same message in which he urged that the color distinction as to voting be removed from the State constitution. His remarks as to the 14th amendment were in general terms. The senate and house approved ratification within a week by overwhelming majorities.

Minnesota had outlawed school segregation in 1864, before the 14th amendment was proposed.

The Minnesota record gives us no clue as to the intention of its legislature.

19.—MISSISSIPPI

The Mississippi record is very clear.

The Governor in 1867 advised the legislature that the amendment was—

"* * * an insulting outrage * * * a mere reading of it will cause its rejection by you."

The two houses considered a long adverse report by a joint committee, and both unanimously voted for rejection.

Then came reconstruction by the military. On January 15, 1870, the provisional Governor, who signed his message as Major General, U.S. Army, recommended ratification of both the 14th and 15th amendments. Within 2 days ratification had been accomplished by an overwhelming vote.

The Mississippi constitution of 1868 contains no mention of segregated schools. Legislation to establish a free school system was enacted in 1870 by the same legislature that ratified the 14th amendment. Segregation was not mentioned in this statute. In fact, amendments specifically requiring segregation were defeated twice in the house. This act, however, contained the following section:

"SEC. 49. *Be it further enacted*, That all the children of this State between the ages of 5 and 21 years, shall have, in all respects, equal advantages in the public schools. And it shall be the duty of the school directors of any district to establish an additional school in any subdistrict thereof, whenever the parents or guardians of 25 children of legal school age, and who reside within the limits of such subdistrict, shall make a written application to said board for the establishment of the same.

This section might not seem to provide for segregation, but in fact it did. That is apparent from the speech of Lieutenant Governor Towers, a Republican, given in the senate while the act was under consideration. He said:

"The provisions of this bill are wise in this respect, for while it recognizes no class distinctions (which of itself ought to render any law odious in a Republican government), it nevertheless consults the convenience and meets all reasonable demands of the people, by providing for the establishment of an additional school or schools, in any subdistrict where the parents or guardians of 25 or more children desire it.

"This leaves the details of the law where they rightfully belong—and where they can be readily arranged, and all conflicting interest harmonized—with the people. If the people desire to provide separate schools for white and black, or for good and bad children, or large and small, or male and female children, there is nothing in this law that prohibits it. The widest latitude is granted, and certainly no class of children in the State can be said to be excluded from school advantages by any provision of the bill."

Evidence abounds that the schools established under this statute were almost always segregated schools. School segregation was required by statute in 1878.

There can be no question but that the Mississippi Legislature which ratified the 14th amendment, dominated though it was by Republicans and former slaves, considered that its ratification did not make school segregation illegal.

20.—MISSOURI

Missouri ratified the 14th amendment in 1867. Its ratification was recommended in general terms by the Governor in his message to the legislature of that year. Resolutions for ratification were adopted by substantial majorities in both houses. No reference to the schools is found in these proceedings.

Missouri's consistent policy has been for school segregation. In 1856 it was a violation of law to instruct Negroes in reading or writing. The constitution of 1865 specifically permitted establishment of separate schools for Negroes. Statutes implementing this permission or requiring separate schools for Negroes were enacted in 1865, 1868, 1869, and 1874.

The next constitution adopted by Missouri was that of 1875, and it required segregated education. The debates of this constitutional convention have been preserved; and although the draft for the article on education was debated for 3 days, the only reference in the debates to the section requiring segregated schools is—

"Section 3 was read and adopted."

Statutes requiring segregated education pursuant to this constitutional provision were enacted in 1879, 1887, and 1889.

There can be no doubt that Missouri believed segregated schools constitutional during this period.

21.—NEBRASKA

Nebraska was admitted to the Union in the early part of 1867, pursuant to an act of Congress which provided that no right should be denied "to any person by reason of race or color * * *." While the enabling act was pending, a bill to eliminate racial segregation in the public schools was passed by the legislature but the Governor refused to sign (appellants' brief, p. 178). Nevertheless, Nebraska was admitted to the Union. Promptly after admission Nebraska ratified the 14th amendment by substantial majorities. The first school laws enacted after admission in 1867 did not mention segregation, and when the University of Nebraska was established in 1869, the legislature specifically declared that color should not be a bar to admission.

In none of these proceedings is there any record of mention of the 14th amendment. Nebraska gives us no clue on the question at hand.

22.—NEVADA

In his message to the legislature on January 10, 1867, Governor Blasdel urged ratification of the 14th amendment, and in the same message he called attention to the report of the superintendent of public instruction in which the latter stated that the failure to educate Negroes and to establish colored schools violated the Nevada constitution. Neither mentioned the 14th amendment. Both the house and senate voted to ratify the amendment by substantial majorities.

Nevada had previously excluded Negroes and others of color from its public schools, though providing that separate schools might be established for them. In 1867 the same legislature that ratified the 14th amendment amended this statute to read as follows:

"Negroes, Mongolians, and Indians shall not be admitted into the public schools, but the board of trustees may establish a separate school for their education, and use the public school funds for the support of the same."

This amendment had been recommended by the standing committee on education with a minority report recommending the elimination of color distinction. But there is nothing to indicate that the 14th amendment played any part in this division of opinion.

In 1872, the Nevada Supreme Court held that a particular statute providing separate schools for Negroes was invalid under the constitution of Nevada though not under the 14th amendment. In a dissenting opinion the following is found:

"The case of relator was sought to be maintained on the ground that the statute was in violation of the 14th amendment to the Constitution of the United States. I fully agree with my associates that this proposal of counsel is utterly untenable."

Nevada did not consider segregation abolished by the 14th amendment.

23.—NEW HAMPSHIRE

The Negro population of New Hampshire in 1870 was 580, or less than 0.2 percent of the total. New Hampshire never had segregated schools.

The 14th amendment was transmitted to the Legislature of New Hampshire by the Governor on June 21, 1866, with a short message recommending ratification. In both houses it was referred to select committees. These committees returned identical reports. The majority report in each instance was quite brief and recommended ratification. The minority report of 13 paragraphs opposed the amendment on many grounds but contained no reference to school segregation. Discussions ensued of which reports are not available, but resolutions in favor of ratification were adopted in both houses by substantial majorities.

There is no evidence on our question in New Hampshire.

24.—NEW JERSEY

The 14th amendment was ratified in New Jersey at an extra session of the legislature which met in September 1866. By the end of the second day of the session, ratification had been accomplished by a vote of 34 to 29 in the assembly and by 11 affirmative votes in the senate, 10 Democrats not voting.

The control of the New Jersey Legislature passed to the Democrats in 1868, and the legislature then adopted a resolution rescinding the ratification of the 14th amendment. This resolution, which was adopted over the veto of the Governor, states a number of objections to the 14th amendment but makes no reference to its effect upon the school system.

New Jersey never had mandatory school segregation by law. Segregation in the public schools was permitted both before and after the ratification of the amendment. In 1868, the State superintendent of schools interpreted the existing law to permit segregated schools. No change was made until 1881 when the legislature enacted a statute prohibiting exclusion from the schools on the ground of color. But in 1894 New Jersey established a manual training school for Negro children which existed at least as late as 1910.

It seems apparent that New Jersey did not consider that ratification outlawed its existing segregated schools.

25.—NEW YORK

The Governor presented the 14th amendment to the legislature in his annual message for 1867. He stated that he would not "discuss the features of this amendment" and he did not mention schools in its connection. By January 10, 1867, the amendment had been ratified by both houses. The vote in the senate was 23 to 3, while the vote in the house was 71 to 36.

Separate schools had long been permitted in New York. In 1864 a statute authorizing local school authorities to establish separate schools for Negroes was enacted as a part of a general revision of the school law. This act permitting segregation is found in subsequent codifications of the New York education law. The New York constitutional convention in 1867 adopted a ringing resolution as to civil rights but did not abolish school segregation.

Not only were separate schools permitted in New York, but separation was in many instances the practice. In 1867 local appropriations for Negro schools exceeded $30,000. New York City had separate Negro schools with almost 2,000 pupils in them. In 1868 expenditures for Negro schools exceeded $55,000, and there were nine separate Negro schools or departments in Brooklyn. Total expenditures for Negro schools in 1869 amounted to almost $65,000, and separate Negro schools were still maintained in Brooklyn and New York. In 1870 expenditures remained about the same and Brooklyn still reported separate Negro schools, there being no report from New York City.

The problem of school segregation and civil rights under the Federal Constitution and statutes was early considered by the New York courts. In four cases they upheld the validity of separate schools for Negroes.

New York considered that segregation was constitutional after the adoption of the 14th amendment.

26.—NORTH CAROLINA

North Carolina first rejected the 14th amendment. It was submitted to the legislature by the Governor on November 19, 1866, considered by a joint committee of both houses with an adverse report, and defeated by overwhelming votes.

Then came reconstruction, as in the other Southern States. The provisional Governor recommended ratification in a message to the legislature on July 2, 1868, and ratification was accomplished on July 4. Nothing in these proceedings had any relation to school segregation.

It is very clear, however, that North Carolina expected to maintain segregated schools without regard to the amendment. A new constitution was drafted in 1868, and the constitutional convention on March 16, 1868, adopted a resolution asserting that the interest and happiness of the races would be best promoted by the establishment of separate schools. The constitution of 1868 contained no specific provision as to segregation in education. Two days after the 14th amendment was ratified, the Governor of North Carolina, in his inaugural address, stated:

"It is believed to be better for both [races] and more satisfactory to both, that the schools should be distinct and separate."

Less than 6 weeks after the amendment was ratified the house and senate adopted a joint resolution stating that it was the duty of the general assembly to adopt a system of free schools but that the races should be segregated. In a message to the legislature dated November 17, 1868, less than 5 months after the ratification of the amendment, the Governor concerned himself with the question of education and said:

"The schools for the white and colored children should be separate * * *."

Finally, North Carolina very promptly adopted legislation with regard to schools in which it was provided as follows:

"SEC. 50. The school authorities of each and every township shall establish a separate school or separate schools for the instruction of children and youth of each race * * *."

We are required again to criticize factual statements by appellants. They assert (brief, p. 145) that proponents of the 1868 constitution thought that segregated schools should not develop through legislation. They cite a treatise; the pages cited relate to something entirely different that does not even concern the public school system. It is equally erroneous to assert that the 1868 constitution may have "required" mixed schools (brief, p. 146); a committee of proponents appointed to win support for the constitution stated at the time that such assertions were "false." The radical Republicans dominated this convention and the succeeding legislatures; they omitted reference to mixed schools in the constitution on the ground that this was a proper subject for legislative or local regulation. The validity of the 1868 statute was not questioned. We reiterate that the brief of appellants is unfair when, as here, it distorts the facts.

Schools have always been segregated in North Carolina, and it is idle to think that the 1868 legislature thought that the 14th amendment would have any effect on that condition.

27.—OHIO

Ohio ratified the 14th amendment in 1867. The Governor recommended ratification on January 2 of that year in a substantial message to the legislature. Ratification was accomplished in the senate on January 3, 1867, by a vote of 21 to 12 and in the house on the next day by a vote of 54 to 25. No mention of schools is made in these proceedings.

Ohio reversed its position the following year despite the opposition of the Republican Governor, Hayes, later President. He told the legislature that nothing had occurred in the intervening year to indicate that ratification did not represent the wishes of the people. A resolution rescinding ratification, nevertheless, was passed by both houses of the legislature. Again no mention was made of schools.

Ohio had a long tradition of separate schools for Negro children which extended almost 20 years after ratification of the 14th

amendment. A statute establishing common schools for Negroes was enacted as early as 1831. Additional statutes were enacted in 1847 and 1848. By 1860 separate schools for Negro children were required when there were more than 30 children in the school district. A statute of 1874 authorized separate schools in the discretion of the local authorities, and this provision was codified in 1880. Segregation was not outlawed by statute until 1887. Segregation was practiced in fact as well as in law. In 1867 there were approximately 10,000 pupils in separate Negro schools in 52 of Ohio's 88 countries. Statistics for the separate schools are available all though the next few years. Segregated schools were attacked as contrary to the 14th amendment in the immediate postwar period but the Ohio court found no constitutional defect in their existence.

Ohio believed that segregated schools and the 14th amendment were compatible.

28.—OREGON

There were 346 Negroes in Oregon in 1870. Oregon on various occasions attempted to prohibit the immigration of Negroes and did prohibit intermarriage, but there is no evidence that school segregation was required or prohibited by statute in Oregon.

Ratification of the 14th amendment was recommended by the Governor in his inaugural address in 1866. It was quickly ratified by both houses. In 1868 Oregon rescinded its ratification of the 14th amendment. In none of the legislative records in Oregon as to the 14th amendment is there any mention of school segregation. Oregon provides little evidence as to the question at hand.

29.—PENNSYLVANIA

Pennsylvania ratified the 14th amendment in 1867. The Governor recommended its ratification in general terms, stating that the 14th amendment would secure "just and equal political privileges." In the same speech the Governor suggested that special schools be provided for the orphans of colored soldiers.

The Pennsylvania Senate adopted a resolution ratifying the amendment on January 11, 1867, by a vote of 21 to 11. Similar action was taken by the house on February 6, 1867, by a vote of 62 to 34.

The debates in Pennsylvania were preserved in full. There was a great deal of discussion on both sides, largely in general terms. One legislator opposing the amendment stated that—

"* * * all the legal barriers theretofore existing between the white and the black races would be removed * * *."

Any references to schools are entirely in general terms; for example, one senator who approved of the amendment stated:

"If [the Negro] fills our pulpits, our schoolhouses, our academies, our colleges, and our senate chambers, I bid him Godspeed."

Another proponent thought it advisable to give the Civil Rights Act of 1866 further force by "putting it in the Constitution of the United States." A review of these debates in no way makes it clear that the legislature believed that ratification of the amendment would be the end of school segregation.

In fact, the school authorities in Pennsylvania had since 1854 been required to establish separate schools for Negroes when 20 or more pupils were available. The superintendent of common schools noted that this statute established a mandatory requirement and that Negro pupils could not be admitted to the white schools unless the requisite number of pupils were not nearby. The legislature in 1869, 2 years after ratification of the amendment, required separate schools for Negroes when it reorganized educational matters in Pittsburgh. School segregation was upheld when attacked on constitutional grounds in 1873. School segregation was not abolished in Pennsylvania until 1881.

We conclude that, since segregated education was required in Pennsylvania before and for a substantial period after ratification of the 14th amendment, it seems fair to state that the Pennsylvania Legislature did not think that such ratification would prohibit segregation.

30.—RHODE ISLAND

The Governor of Rhode Island recommended ratification of the 14th amendment on January 15, 1867, and the senate passed a resolution for ratification on February 5, 1867, by a vote of 26 to 2, the house following two days later by a vote of 60 to 9. The resolution for ratification is simple, stating merely that the two houses ratified, confirmed and assented to the amendment.

In 1800 Rhode Island enacted a statute requiring free schools for white inhabitants in every town, but this act was repealed in 1803. Further school legislation was enacted in 1828 and thereafter. Separate schools for Negroes were established in Providence in 1828 and continued in operation until 1865. Similar schools existed in Bristol and Newport. Segregation was permitted under "general regulation" by a law enacted in 1845. Segregation of Indians was upheld as late as 1864, but all school segregation was abolished by statute in January 1866, a year before the 14th amendment was proposed.

There is no evidence that school segregation was ever considered in connection with the 14th amendment in Rhode Island.

31.—SOUTH CAROLINA

South Carolina, as is generally known, was perhaps the most turbulent of all the States during the Reconstruction period. Space here does not permit a thorough review of the efforts made during this period to establish a system of public schools. But all of the evidence seems to make it clear that, in spite of the efforts made to establish mixed schools, the 14th amendment and its meaning did not play a part.

Governor Orr on November 27, 1866, recommended rejection of the amendment when he transmitted it to the legislature. His message did not mention schools. The senate rejected it unanimously, and in the house the vote was 95 to 1 against its ratification.

Reconstruction then came to South Carolina. A new constitution was adopted in 1868. It required the legislature immediately after its organization to ratify the 14th amendment. The debates in the constitutional convention indicate that its members realized that ratification of the amendment (which the legislature only had the power to do) was a prerequisite to readmission to the Union and feared that opponents of the amendment might control the legislature. For that reason they made ratification mandatory.

This constitution directed the general assembly to establish a system of free schools, and further required that:

"All the public schools * * * shall be free and open to all the children and youths in the State, without regard to race or color."

The 14th amendment was not mentioned in the long debates regarding the adoption of the public school provisions.

Even though it might appear that this constitutional provision was designed to require amalgamated schools, the evidence is that such can hardly be the case. The first session of the legislature met on July 6, 1868, less than 3 months after the adjournment of the constitutional convention. The 14th amendment was promptly ratified. On the day that the legislature met, it received a message from Governor Orr in which he spoke at length about a proposed public school system. In his remarks he stated:

"If it shall be attempted to establish schools where both races are to be taught, no provision being made for their separation, the whole system will result in a disastrous failure. The prejudices of race, whether just or unjust, exist in full force not more in South Carolina than in New England and the West. In the last named localities separate schools are provided for white and colored children, and in a community where these prejudices prevail in so strong a degree, how unreasonable it is to attempt the organization of mixed schools. * * * I therefore earnestly recommend that in adopting an educational system, care be taken to provide for the white and colored youths separate places of instruction. At the same time, in the name of peace and of the happiness of the people I protest against this amalgamation."

Two days later a new Governor, Robert K. Scott, of Maine, Brevet Brigadier General, United States Army, was inaugurated. Two paragraphs from his inaugural address contain his views on school segregation:

"I respectfully recommend that the general assembly will provide by law for the establishment of at least two schools in each school district when necessary, and that one of said schools shall be set apart and designated as a school for colored children, and the other for the white children, the schools fund to be distributed equally to each class, in proportion to the number of children in each between the ages of 6 and 16 years. I deem this separation of the two races in the public schools as a matter of the greatest importance to all classes of our people.

"While the moralist and the philanthropist cheerfully recognizes the fact that 'God hath made of one blood all nations of men' yet the statesman in legislating for a political society that embraces two distinct and, in some measure, antagonistic races, in the great body of its electors, must, as far as the law of equal rights will permit, take cognizance of existing prejudices among both. In school districts, where the white children may preponderate in numbers, the colored children may be oppressed, or partially excluded from the schools, while the same result may accrue to the whites, in those districts where colored children are in the majority, unless they shall be separated by law as herein recommended. Moreover, it is the declared design of the Constitution that all classes of our people shall be educated, but not to provide for this separation of the two races will be to repel the masses of the whites from the educational training that they so much need, and virtually to give to our colored population the exclusive benefit of our public schools. Let us, therefore, recognize facts as they are, and rely upon time and the elevating influence of popular education, to dispel any unjust prejudices that may exist among the two races of our fellow citizens."

A temporary school law was passed on September 15, 1868, and a statute establishing a general system of public schools was passed on February 16, 1870. A Massachusetts Negro was appointed the first superintendent of public education. He submitted a report to the legislature in 1870. This report contained recommendations from local authorities as to the establishment of a public school system. Of the 13 of these local reports referring to the race problem, 12 recommended separate schools.

Despite the fact that the superintendent of education was a Negro, no real effort was made to require amalgamated schools in South Carolina in the Reconstruction period except in isolated instances. The superintendent ordered the School for the Deaf, Dumb and Blind amalgamated, and, as a result, the school was closed for 3 years and

then reopened on a segregated basis. Efforts to amalgamate the university failed similarly.

There is no indication that, in South Carolina, the 14th amendment played any part in the question of whether or not the schools should be segregated. In fact, persons in high office during the Reconstruction period never once considered that the 14th amendment required the abolition of segregated schools. We think, therefore, that we are justified in stating that the South Carolina evidence requires the conclusion that the legislature that ratified the 14th amendment did not consider that its ratification made segregated schools unlawful.

32.—TENNESSEE

The Tennessee record gives an interesting picture of the unrest and violence of the times, but it also makes clear the answer to the question considered here.

The Republican Governor called the legislature in special session on July 4, 1866, for the express purpose of considering the 14th amendment. His address, though strongly in favor of ratification, does not mention the school system. In the senate a senator who opposed the amendment proposed that there should be added to the ratifying resolution a proviso that the amendment should not be construed to confer suffrage upon the Negro, or the right to hold office or to sit upon juries, or several other stated rights, but again no reference is found to the schools. His proviso was defeated and the amendment was ratified by a vote of 14 to 6. The minority then filed a formal protest of some length, but again no mention was made of schools.

The Tennessee House could not obtain a quorum until two members had been arrested and brought to the House floor. They refused to vote, but they were nonetheless counted as present in order to make a quorum. The amendment was ratified by a vote of 39 to 15. Again the minority filed a formal protest, but schools were not referred to in it.

The same legislature that ratified the 14th amendment amended the school law on March 5, 1867, to require segregated education in Tennessee. This act was described by the Republican Governor in his second inaugural address as "the wise and desirable school law."

The first report of the superintendent of public instruction, dated October 7, 1869, contains the following comment on this statute:

"The old law allowed none but whites to be educated. The new law educates all of them and in addition, the blacks are lifted out of ignorance and saved from being a dangerous class" (p. 17).

The requirement for segregation was written into the Tennessee constitution of 1870, and reenacted in a further amendment to the school law in 1873. Schools remain segregated in Tennessee to this day.

Since the same legislature that ratified the 14th amendment established a segregated school system in Tennessee, we think it clear that this legislature did not consider that the 14th amendment made segregated education unconstitutional.

33.—TEXAS

The Governor of Texas merely expressed his unqualified disapproval of the 14th amendment when he addressed the legislature in 1866. The house and senate committees on Federal relations both returned long reports opposing ratification. These reports pointed out that the proposed amendment might give the Negro the right to vote, the right to serve on juries, the right to bear arms, and other rights not enumerated; but schools are not mentioned. It should be also noted that those who signed each report viewed with consternation the provisions of section 5, pointing out that the right given to Congress under this section was likely to destroy the very existence of the State governments. The house rejected the amendment by a vote of 70 to 5, and the senate followed by a vote of 27 to 1.

The reconstructed Texas Legislature ratified the amendment on February 18, 1870. There is no record of anything relating to the schools in these proceedings.

The constitution of 1866 provided that school taxes levied on Negroes should be appropriated for the use of Negro schools, but this constitution was not acceptable to Congress. Therefore, another constitution was drafted in 1869. The 1869 constitution required the legislature to establish a free school system but did not mention segregation.

Texas was readmitted to representation in Congress by an act approved March 30, 1870. This statute provided that the Texas constitution should not be amended—

"To deprive any citizen or class of citizens of the United States of the school rights and privileges secured by the constitution of said State."

The same legislature that ratified the 14th amendment enacted the following statute as to schools:

"All difficulties arising in any of the public free schools of this State shall be reported by the trustees to the proper board of directors, and said board shall have power to settle same. In order to do this, they may remove teachers or expel students for insubordination; and when, in their opinion, the harmony and success of the school require it, they may make any separation of the students or schools necessary to insure success, so as not to deprive any student or students of scholastic benefits, except for such misconduct as demand expulsion."

This law is equivocal on its face, but the report of the committee that recommended its adoption makes its purpose clear. An excerpt from that report is as follows:

"2. They [the committee] were perfectly aware of the conflicting views in relation to free schools and the difficulty of harmonizing those views on a constitutional basis.

"3. They felt constrained to avoid extreme views—mixed schools on the one hand, and separate schools on the other—by legislative enactment.

"4. They concluded that, as all philanthropists and patriots desire the education of all the citizens of the State, without distinction of sex or race, color or previous condition, that our whole citizenship may be elevated, so essential to a republican government, that we might adopt a system based on a compromise of views, in order to [reach] an agreement on some system, as, that without some concession and compromise, we will adjourn and return to our constituents without redeeming our pledges on this subject, to their great disappointment. We have, therefore, agreed on the following basis, comprehensive and equal, yet plain, simple, and economical, essential as we think to a successful inauguration of our system * * *.

* * * * *

"We provide that teachers may be removed for sufficient cause, and students expelled or separated when necessary for the promotion of peace, success, and harmony of the institution, so as none shall be deprived of scholastic benefits, except when expelled * * *."

This seems clear: The committee was unwilling to require segregated schools, but it wished to give the local authorities the right to segregate schools as local conditions made it desirable. We consider, therefore, that this legislature, the same one that ratified the 14th amendment, did not consider that its ratification made segregated schools unconstitutional.

Segregated schools were required by the constitution of 1876 and schools have remained segregated in Texas ever since.

34.—VERMONT

Governor Dillingham on October 12, 1866, strongly recommended ratification of the 14th amendment which, he said, was designed to secure "equal rights and impartial liberty." The Vermont Senate unanimously voted to ratify on October 23, 1866. The vote in the house, taken a week later, was 96 to 11 in favor of ratification.

In all these proceedings no mention is made of school segregation. Vermont apparently never had segregated schools. Its Negro population in 1870 was less than 1,000.

The legislative history in Vermont provides no evidence on the question here at issue.

35.—VIRGINIA

When the Virginia Legislature met in 1867, Governor Pierpont discussed the 14th amendment at some length, pointing out that the State was not likely to get better terms for the readmission of its Senators and Representatives to Congress and stating the view that acceptance of the amendment was not dishonorable. The legislature, however, refused to ratify the amendment, the vote being unanimous in the senate and 74 to 1 in the house. No mention of schools is made in these proceedings.

The government of Virginia was then reorganized under the Reconstruction Acts and a new constitution of 1869 adopted. When the first legislature met on October 5, 1869, Governor Walker urged ratification, saying that there was no satisfactory alternative. Ratification was accomplished swiftly by a vote of 132 to 0 in the house and 36 to 4 in the senate. The resolution is a simple one and nothing in the proceedings refers to the school system.

In their discussion of the Virginia situation, as in many sections of their brief, appellants obscure the facts. We, therefore, state them in some detail here so that there may be no confusion. The Virginia constitution of 1869 directed the legislature at its first session to establish a system of free schools. No provision as to segregation was included. The convention that prepared this constitution was composed of 35 white conservative Virginians, 24 Negroes, 14 white loyalists and 26 who came from outside Virginia. It is reported that there was an agreement between the Negroes and the carpetbaggers; the carpetbaggers would vote for civil rights and the Negroes would put the carpetbaggers in office. This agreement worked long enough to defeat proposals for segregated schools. But it was a different story when the Negroes proposed to require amalgamated schools. Then the carpetbaggers "crawfished," as it was said, and voted with the conservatives, much to the disgust of the Negroes who accused them of breach of faith. So mixed schools were defeated. The reason for the action of the carpetbaggers, it was said, was their fear that a provision requiring mixed schools would result in defeat of the constitution in the popular election on the question of its ratification. Nothing at all in this discussion as to education made mention of the 14th amendment.

The first legislature under the 1869 constitution took no action except to ratify the 14th and 15th amendments; it then adjourned to await readmission of Virginia's Representatives to Congress. The legislature then reconvened. It was the same legislature that ratified the 14th amendment. It promptly proceeded to establish a system of free schools and, in the new school law, it was required that:

"* * * white and colored persons shall not be taught in the same schools, but in separate schools * * *."

In the course of the debates on the bill which became this statute, a motion was made in the senate on June 7, 1870, to strike out the provision requiring segregation. This motion was defeated by a vote of 23 to 6. On the next day an amendment was proposed to substitute permissive segregation for the mandatory segregation provision contained in the bill. This was also defeated by a vote of 27 to 3. Similarly, on June 29, 1870, a motion to strike out the segregation provision was defeated in the house by a vote of 80 to 19. The bill was passed by the senate by a vote of 23 to 3 and by the house by a vote of 72 to 33.

Since the legislature that ratified the 14th amendment established segregated schools in Virginia and specifically refused to permit amalgamation, it becomes impossible to believe that this legislature thought that its action would contravene the 14th amendment.

36.—WEST VIRGINIA

The Governor recommended ratification of the 14th amendment in his address to the West Virginia Legislature on January 15, 1867. He spoke generally about the "moderation" of the amendment, and did not refer to any effect that it might have on schools. The senate without discussion voted to ratify the amendment on the day of the Governor's address, while the house took similar action the next day.

Ratification of the 14th amendment was accomplished in West Virginia on January 16, 1867. On February 27, 1867, 6 weeks later, the same legislature adopted a statute providing that:

"White and colored persons shall not be taught in the same schools * * *."

This act was merely a continuance of principles established earlier. Although the constitution of 1863 required the establishment of a school system, segregation was not required, but the legislature in 1863, in establishing the school system, required segregation of the races. After the 1867 act came the new constitution of 1872 which placed the requirement of segregation in the constitution where it remains to this day.

Segregated schools and the 14th amendment were approved by the same legislature. That legislature could not have thought them incompatible.

37.—WISCONSIN

The Governor of Wisconsin recommended ratification of the 14th amendment in a message to the legislature when it met in 1867. He described the amendment and its purposes in terms which today seem somewhat florid, but his detailed description contained no mention of public schools. A resolution for ratification was referred to a senate committee which returned both majority and minority reports. Neither report, though both are quite detailed, mentions schools. The senate adopted a resolution ratifying the amendment on January 23, 1867. The house, after a 3-day debate, followed by taking affirmative action on February 7, 1867.

Wisconsin never had segregated education. The Negro population was comparatively quite small. Wisconsin gives no affirmative evidence as to the expected effect of the 14th amendment on school segregation.

D.—CONCLUSION

That is the end of our review of the records of the individual States. Though we have discarded a wealth of material in an effort to present only that most directly relevant, the path has nevertheless seemed long. But the conclusion is clear, startling though it may be.

In not 1 of the 37 States that considered the 14th amendment is there any substantial evidence that its ratification was considered to outlaw segregation by race in the public schools.

The States may be classified as follows between those where there is substantial affirmative evidence that ratification was not considered to require the end of segregation and those presenting no substantial affirmative evidence at all:

SEGREGATION NOT CONSIDERED ABOLISHED

Alabama	New Jersey
Arkansas	New York
California	North Carolina
Delaware	Nevada
Georgia	Ohio
Illinois	Pennsylvania
Indiana	South Carolina
Kansas	Tennessee
Kentucky	Texas
Maryland	Virginia
Mississippi	West Virginia
Missouri	

NO SUBSTANTIAL EVIDENCE

Connecticut	Minnesota
Florida	Nebraska
Iowa	New Hampshire
Louisiana	Oregon
Maine	Rhode Island
Massachusetts	Vermont
Michigan	Wisconsin

These results may be tabulated in another form:

Number of States where substantial evidence exists that ratification of the 14th amendment was not thought to outlaw segregated schools	23
Number of States where no substantial evidence on the question exists	14
Number of States where substantial evidence exists that ratification was thought to outlaw school segregation	0
Total	37

The answer here is irrefutable.

APPENDIXES A AND B

The information contained in these appendixes clearly reveals that in the Brown cases a unanimous Supreme Court rested its position "upon a misreading of language and legislative history which [has] confuse[d] and stultif[ied] the interpretive process."

The very same questions which the Supreme Court propounded in the Brown cases would be pertinent to the determination of the constitutionality of a new Federal public accommodations law passed under the authority of the 13th and 14th amendments.

The subject of the new inquiry would be the intended effect of the 13th and 14th amendments on segregation in the "services, facilities, privileges, advantages and accommodations" of the establishments designated in the proposed public accommodations law.

Any new review of the history of the 14th amendment would cover much of the same materials that were examined in the Brown cases. It would result in an open inspection of the Supreme Court's previous finding of inconclusiveness of the history of that amendment, an investigation that is long overdue. If the Court's finding of inconclusiveness is accepted as a binding precedent, "the 14th amendment [or any other section of the Constitution] could mean anything or it could mean nothing, depending on the mood of the [Supreme] Court and the pressure brought to bear on its members. The Constitution [will have] become as unstable as the pendulum of a clock which swings from one extreme to another." (Hearings on S. 1732 before the Senate Committee on Commerce, 88th Cong., 1st sess. 1253 (1963).)

In the present instance, a review of the legislative history of the 13th and 14th amendments has clearly revealed that neither of these two amendments was intended to empower the Congress to enact a public accommodations law regulating the operations of the private business establishments designated in subsection 201(b) of H.R. 7152.

JUDICIAL HISTORIES

The judicial histories of the 13th and 14th amendments are equally barren of any legitimate justification for the enactment of title II.

THIRTEENTH AMENDMENT

A series of memorandums dealing with the constitutionality of the various titles of H.R. 7152 were inserted into the record of the debates in the House by the chairman of the House Committee on the Judiciary. (CONGRESSIONAL RECORD, pp. 1521–1528, Jan. 31, 1964.) In that portion of the memorandums pertaining to title II it was asserted that "the arguments advanced by Justice Harlan [in the Civil Rights cases] lend support to the constitutionality of Federal public accommodations legislation under the 13th amendment."

But in the very next sentence it was admitted that "It must be recognized, however, that there is no decisional law to support such an approach and that the scope of the power of Congress under the 13th amendment is unclear." (Id. at 1526; and see 1 Race Rel. L. Rep. 614.)

The scope of the 13th amendment has been drawn much too narrow to accommodate the enactment of a Federal public accommodations law.

FOURTEENTH AMENDMENT

In arriving at its decision in the civil rights cases the Supreme Court deliberated on the assumption that "a right to enjoy equal accommodation and privileges in all inns, public conveyances, and places of public amusement, is one of the essential rights of the citizen which no State can abridge or interfere with." (*Civil Rights Cases, supra,* 19.)

The Court did not undertake to decide whether or not such a Federal right did actually exist.

The origin and the nature of the suggested right to service has been described as follows: "If there is a right to the equal use of accommodations held out to the public, it is a right of citizenship and a constitutional right under the 14th amendment. It has nothing to do with whether a business is in interstate commerce or whether discrimination against individuals places a burden on commerce. It does not depend upon the commerce clause and cannot be limited by that clause." (Hearings on S. 1732 before the Senate Committee on Commerce, 88th Cong., 1st sess. 190 (1963).)

It has not yet been adjudicated that inherent in the 14th amendment—or any other provision of the national constitution—is the proposed right to service in private business establishments. (See hearings on S. 1732 before the Senate Committee on Commerce, 88th Cong., 1st sess. 133, 145, 147 (1963).) But yet it is still insisted that the 14th amendment stands as legitimate authority for the enforcement of this nonexistent right by the extraordinary involvement of the Federal Government in the operations of such establishments called for in title II.

Section 1 of the 14th amendment provides in part as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (H. Doc. No. 112, 88th Cong., 1st sess. 14 (1963).)

Section 5 of the amendment provides that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." (Ibid.)

The Supreme Court stated in its opinion in the civil rights cases of 1883 that "It is State action of a particular character that is prohibited. Individual invasion of individ-

ual rights is not the subject matter of the amendment." (109 U.S. 11.)

In 1948 in its opinion in the case of *Shelley* v. *Kraemer*, 334 U.S. 1, on page, 13, the Supreme Court declared that "Since the decision of this Court in the *Civil Rights Cases*, 109 U.S. 3 (1883), * * * the principle has become firmly embedded in our constitutional law that the action inhibited by the 1st section of the 14th amendment is only such action as may fairly be said to be that of the States. That amendment erects no shield against merely private conduct, however discriminatory or wrongful."

And last year in one of the sit-in cases, the Supreme Court declared that "It cannot be disputed that under our decisions 'Private conduct abridging individual rights does no violence to the equal protection clause unless to some significant extent the State in any of its manifestations has been found to have become involved in it.'" (*Peterson* v. *City of Greenville*, 373 U.S. 244, 247 (1963).)

It is clear that "the language of [the 14th amendment] sets forth express limitations upon the power of a State to regulate individual behavior and thereby creates constitutional rights in individuals as against a State. * * * [P]ersons who claim an infringement of their constitutional rights as secured to them by these quoted provisions of the 14th * * * amendment * * * must attribute the alleged unconstitutional action to a State. Such a showing of 'State action' is essential, even in those powers of enforcement under section 5 * * * of [the] amendment." (1 Race Rel. Law Rep. 613 (1956).)

STATE ACTION

Various concepts of State action applied by the Supreme Court of the United States are set forth in an article appearing in volume 1 of the Race Relations Law Reporter on pages 613–637. The definitions in the various opinions cited included the following:

1. Acts of State executive officers.
2. Acts of members of the State judiciary.
3. Legislative enactments.
4. Municipal ordinances.
5. Improper enforcement of valid laws.
6. Acts of State officers contrary to State law.
7. Private action under the constraint of mandatory State statutes.
8. Acts of lessees from the State.

A review of the cases thus far decided by the Supreme Court has revealed that "[the Court] has not * * * held that, where a State or one of its political subdivisions exercises no element of coercion upon a business to discriminate, the business is free to discriminate without violating the prohibitions of the 14th amendment." (CONGRESSIONAL RECORD, vol. 109, pt. 9, p. 12362.)

The State must be found to be involved to some significant extent. The ultimate substantive question is whether the character of the State's involvement dictates its being held responsible for the discrimination by a private businessman.

It is readily apparent that "the trend in recent years has been toward expansion of the State action concept through a lessening of factors required to establish this nexus, but nonetheless the mere act of licensing or issuing a permit by the State should not be sufficient." (46 Va. L. Rev. 126, 127 (1960).)

"The fact that [a] business is carried on under a license is generally regarded as not changing the character of the business from a private one to a public one" within the province of the 14th amendment. (10 Am. Jur. 915 (1937).)

This principle was upheld by the U.S. Circuit Court of Appeals for the Fourth Circuit in 1959 in a case involving a restaurant in Alexandria, Va. A Negro had brought a suit in a Federal district court against the restaurant complaining of a wrongful refusal of service. The suit was dismissed by the district court and that judgment was affirmed on appeal to the circuit court.

The plaintiff contended that the acquiescence of the Commonwealth of Virginia in the segregation of restaurants amounted to discriminatory State action falling within condemnation of the 14th amendment. (*Williams* v. *Howard Johnson's Restaurant*, 268 F. 2d 845 (4th Cir. 1959).)

The court observed that "The essence of the argument is that the State licenses restaurants to serve the public and thereby is burdened with the positive duty to prohibit unjust discrimination in the use and enjoyment of the facilities." (Id. at 847.)

It was then noted that "This argument fails to observe the important distinction between activities that are required by the State and those which are carried out by voluntary choice and without compulsion by the people of the State in accordance with their own desires and social practices. Unless these actions are performed in obedience to some positive provisions of State law they do not furnish a basis for the pending complaint. The license laws of Virginia do not fill the void." (Ibid.)

The court then cited section 36–26 of the Virginia Code which makes it unlawful for any person to operate a restaurant in the State without an unrevoked permit from the chief executive officer of the State board of health. It observed that "the statute is obviously designed to protect the health of the community but it does not authorize State officials to control the management of the business or to dictate what persons shall be served. The customs of a people of a State do not constitute State action within the prohibition of the 14th amendment." (Id. at 848.)

The court cited as authority for its conclusion the following portion of the opinion of the Supreme Court of the United States in the case of *Shelley* v. *Kraemer*, 334, U.S. 1, 13 (1948):

"Since the decision of this Court in the Civil Rights, 1883, 109 U.S. 3, * * * the principle has become firmly imbedded in our constitutional law that the action inhibited by the first section of the 14th amendment is only such action as may fairly be said to be that of the States. That amendment erects no shield against merely private conduct, however discriminatory or wrongful."

This principle was again upheld in 1960 in a case involving a restaurant in Baltimore, Md. A suit was brought by a Negress for wrongful refusal of service on account of her race. She sought in the Federal District Court (1) a declaratory judgment that the denial of such service violated her rights under the Constitution and laws of the United States and (2) an injunction restraining such discrimination at all restaurants operated by the defendant.

The plaintiff had sought to invoke the prohibition of section 1 of the 14th amendment on the grounds that "The admission by the State of a foreign corporation and the issuance to it of a license to operate a restaurant 'invests the corporation with a public interest' sufficient to make its action in excluding patrons on a racial basis the equivalent of State action." (*Slack* v. *White Tower System, Inc.*, 181 F. Supp. 124, 129 (D.C. Md. 1960).)

The Court rules that "the fact that defendant [was] a Delaware corporation [was] immaterial. Once admitted to do business in the State of Maryland, it has the same rights and duties as domestic corporations engaged in the same business. This factor does not distinguish the case from the *Williams* v. *Howard Johnson's Restaurant*, *supra*, where the State action question was discussed at p. 847." (Ibid.)

The Court observed that Maryland license laws pertaining to restaurants were not regulatory and that the applicable Baltimore ordinance was "obviously designed to protect the health of the community." (Ibid.)

"Neither the statute nor the ordinance authorize[d] State or city officials to control the management of the business of a restaurant or to dictate what persons shall be served." (Ibid.)

The Court then declared that "Even in the case of licensees, such as racetracks and taverns, where the business is regulated by the State, the license does not become a State agency, subject to the provisions of the 14th amendment. [Citations omitted.]" (Ibid.)

The Court also rejected the proposition that the defendant had "'move[d] beyond matters of purely private concern'" and had "'act[ed] in matters of high public interest'" so as to "become 'representatives of the State' subject to the restraints of the 14th amendment." It declared that the "defendant ha[d] not exercised powers similar to those of a State or city." (Ibid.)

The decision of the district court was affirmed on appeal to the Fourth Circuit Court of Appeals, 284 F. 2d 746 (4th Cir. 1960).

Mr. Justice Douglas has been seeking to induce the Supreme Court of the United States into renouncing the principle that a State license does not transform a private business into a State instrumentality. The first instance was in the case of *Garner* v. *Louisiana*, 368 U.S. 157 (1961). In this case the Court reversed the conviction of Negro sit-in demonstrators for disturbing the peace in a restaurant in Baton Rouge, La., on the technical ground that the record failed to disclose any evidence of such a disturbance. Mr. Justice Douglas thought the Court should have reversed the conviction on the ground that the restaurant was public facility in which the State of Louisiana could not act to enforce a policy of racial segregation. The restaurant was licensed to operate by the municipality of Baton Rouge.

And according to Mr. Justice Douglas, "A license to establish a restaurant is a license to establish a public facility and necessarily imports in law, equality of use for all members of the public. I see no way whereby licenses issued by a State to serve the public can be distinguished from leases of public facilities * * * for that end." (Id. at 184.)

"Those who license enterprises for public use should not have under our Constitution the power to license it for the use of only one race." (Id. at 185.)

Mr. Justice Douglas raised the issue again in a concurring opinion in the case of *Lombard* v. *Louisiana*, 373 U.S. 267 (1963). This case presented for review trespass convictions resulting from an attempt by Negroes to be served in a privately owned restaurant in New Orleans, La. The Court held that the convictions must be reversed because they were commanded "by the voice of the State directing segregated service at the restaurant." (Id. at 274.) The Court had found that while there was no segregation ordinance in effect in the city of New Orleans segregation was being enforced by city officials just as if such an ordinance was in existence. In addition the State's criminal processes had been employed to enforce the policy of segregation thus mandated.

According to Mr. Justice Douglas, "There [was] even greater reason to bar a State through its judiciary from throwing its weight on the side of racial discrimination in the present case, because we deal here with a place of public accommodation under license from the State." (Id. at 281.)

He declared that this view was not novel and that it stemmed from the dissent of Mr. Justice Harlan in the *Civil Rights Cases*, *supra*, 58–59. Mr. Justice Douglas then proceeded to affirm that dissent with the following language:

"State licensing and surveillance of a business serving the public also brings its service into the public domain. This restaurant needs a permit from Louisiana to operate; and during the existence of the license the State has broad powers of visitation and control. This restaurant is thus an instrumentality of the State since State charges it with duties to the public and supervises its performance. The State's interest in and activity with regard to its restaurants extends far beyond any mere income-producing licensing requirement." (Id. at 282–283.)

The Supreme Court has thus far refused to alter that part of the "law of the land" under which the operation of a private business under a State license does not transform that private business into an agency of the State. Heed should be taken of the fact that in a companion case to the Lombard case, the Supreme Court declared, without any disclaimer from Mr. Justice Douglas, that "It cannot be disputed that under our decisions 'Private conduct abridging individual rights does no violence to the equal protection clause unless to some significant extent the State in any of its manifestations has been found to have become involved in it.' (*Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 722 (1961); *Turner* v. *City of Memphis*, 369 U.S. 350 (1962)." *Peterson* v. *City of Greenville*, 373 U.S. 244 (1963).)

DISTINGUISHING FEATURES OF PROPOSED 1964 LAW

Proponents of title II have admitted that the 1875 act was "defective in that it did not profess to be corrective of any constitutional wrong committed by the States; it did not make its operation depend upon any such wrong committed." (CONGRESSIONAL RECORD, p. 1549, Jan. 31, 1964.)

But notwithstanding the near duplication of the void act of 1875 in the proposed act of 1964, it is still claimed that there are substantial differences between the public accommodations provisions of the Civil Rights Act of 1875 and those of title II. (CONGRESSIONAL RECORD, p. 1549, Jan. 31, 1964.) It is claimed that "the language of the public accommodations law under the 14th amendment we are now debating ties its operative provisions to the authorizing acts of a State or a political subdivision thereof. Thus it divests itself of any unconstitutional character." (Ibid.)

It is asserted that "the language of sections 201 (b) and (d) clearly would not extend to any case where, as a matter of constitutional law, State action is not present; hence there can be no doubt of its constitutionality as an implementation of the 14th amendment." (CONGRESSIONAL RECORD, p. 1526, Jan. 31, 1964.)

STATE ACTION CONCEPT EXPANDED

Having acknowledged that the unconstitutional act of 1875 was so drafted as to apply to purely private business activities, advocates of the proposed 1964 statute claim that the latter's provisions have no such "unconstitutional character." They assert that the new act would extend only to those instances in which "State action" was present. They cite the express requirement of "support by State action" in subsection 210 (b) and its definition in subsection 201(d).

Subsection 201(d) now declares that "Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of a State or political subdivision thereof."

But overshadowing all of the protestations of its constitutionality are the oft-expressed opinions that title II should or would apply to private business activities beyond those presently considered to be within the purview of prevailing concepts of "State action."

For instance, it is well known that the clearly defined "law of the land" is that compliance with licensing requirements does not transform the activities of a businessman into "State action" subject to the strictures of the 14th amendment. The activities of a privately owned business pursuant to such regulations does not fall within any prevailing concepts of actionable "State action." This "law of the land" has been blatantly ignored by supporters of title II.

Today, there exists no business that is not touched by at least a slight degree of "State action." The operations of practically every business in the United States are subject to some State and/or local licensing requirements and health, fire, or safety regulations. Under the proposed expansionist license theory of "State action," every individual business within the four categories specified in subsection 201(b) operating under a State or local license would be subject to the proscriptions of title II.

TITLE II IN THE HOUSE

The current definition of "supported by State action" is an amended form of subsection 201(d) of H.R. 7152 as it was reported to the House by its Committee on the Judiciary. The section originally provided that discrimination would be supported by State action within the meaning of title II if such discrimination was "(1) carried on under color of any law, statute, ordinance, regulation, customs, or usage; or (2) required, fostered, or encouraged by action of a State or political subdivision thereof." (Report to accompany H.R. 7152, H. Rept. No. 914, 88th Cong., 1st sess. 3 (1963).)

An amendment to subsection 201(d) was proposed to expand its two definitive clauses into three provisions to read as follows:

"(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 fostered, required or enforced by officials of the State or political subdivision thereof; (3) is fostered or required by action of a State or political subdivision thereof." (CONGRESSIONAL RECORD, p. 1962, Feb. 5, 1964.)

The author of the amendment stated that the terms "custom or usage" in the original version of 201(d) could have been extended "far beyond the reach * * * intend[ed]." "Nearly every individual act, conceivably, could come under that kind of definition." Ibid. He then explained that under the new "custom or usage" clause, "before a custom or usage would become State supported action there would have to be some kind of action, some kind of activity, by an official of a State or of a political subdivision of the State." (Ibid.)

He then noted that the new third subsection eliminated the word "encouraged" as it related to the "'action of a State or political subdivision thereof.'" He was "fearful of the word 'encouraged' because it "could have too broad a scope." (Ibid.)

The sponsor of the amendment was then asked whether the changed subsection would include within its terms "mere licensing" and "nonaction by the State, with only licensing." He replied as follows: "The mere licensing by or the mere nonaction by a State would not in itself be enough to meet the requirement." (Ibid.)

He pointed out that the word "fostered" was used. Consequently, the resolution of the issue would "depend upon the circumstances surrounding the licensing, and whether the State actually fostered the action. Conceivably licensing could be a part of other activities which fostered the action." (Ibid.)

In answer to the specific question, he reiterated his own opinion that "the mere licensing of an activity would not be sufficient to bring the activity under [his] amendment as State supported." (Ibid.)

An amendment to the initial amendment was subsequently passed which struck out the word "fostered" in clauses (2) and (3). Id. at 1884. The amended amendment was then passed as the present form of subsection 201(d). (Ibid.)

The author of the revision of the definition of "State action" stated clearly that he did not intend that "licensing" alone would fall within the purview of subsection 201(d). But the record does not contain positive expressions of widespread acceptance of this interpretation in the House of Representatives. And unfortunately the still indefinite terms of subsection 201(d) are barren of any concrete indication that any such exclusion was actually intended to be allowed.

Two days after the revision of subsection 201(d), another Representative spoke in opposition to H.R. 7152. His opinion of title II was that "If enacted and sustained I cannot conceive any human activity which may not be regimented to [sic] Federal authorities." (CONGRESSIONAL RECORD, p. 2474, Feb. 7, 1964.)

He later took notice of the current notion that actionable "State action exists in individual action * * * regulated by the State in the form of sanitary, fire, or occupancy requirements, or by virtue of the simple act of licensing." (Id. at 2475.)

He contended that "to create such a legal fiction would raise a whole host of problems." (Ibid.) He then concluded that the 14th amendment had not conferred any authority upon the Congress to adopt H.R. 7152. (Id. at 2476.) The obvious import of his remarks was that title II still provided for Federal regulation of all private businesses within the categories of businesses designated in subsection 201(b) which were licensed or regulated by the State in the form of sanitary, fire or occupancy requirements. The RECORD does not reveal that anyone arose to declare that this opponent has misconstrued the purpose and scope of title II as amended.

TITLE II IN THE SENATE

The senior Senator from Minnesota has stated that there were four areas of possible application in the spectrum of State action under the 14th amendment. He also declared that he did not happen to agree with some of them. He listed them as follows:

"First, a State law or an ordinance of any of its political subdivisions which specifically prescribes segregation.

"Second, State officials publicly admitting that they are enforcing a custom of segregation.

"Third, so-called colorblind trespass laws being used to call in police officers to eject persons from the premises of a proprietor whose sole reason to eject is to keep the facilities segregated.

"Fourth, the license theory whereby the issuance of a State license or articles of incorporation, or the issuance of a public health certificate, and so forth, would be sufficient State action to satisfy the requirements of the 14th amendment." CONGRESSIONAL RECORD, p. 4857, Mar. 10, 1964.)

The senior Senator from Minnesota then declared he did "not contend that" and that "This last category is in his opinion sufficient State action to bring the 14th amendment to bear but it does not represent the present limit of the spectrum." (Ibid.)

He went on to declare that he was "merely saying that this is the spectrum of what are State actions under the 14th amendment. The first two have been declared by the Supreme Court to be clearly sufficient State action within the bounds of the 14th amendment." (Ibid.)

He then noted that the third category was currently pending before the Supreme Court for decision and that the license theory,

which he acknowledged to be a rather far-reaching doctrine, "was the theory of Mr. Justice Douglas in one of his concurring opinions." (Ibid.)

It is of interest here that Mr. Justice Harlan in his spearate opinion in the companion Greenville sit-in cases asserted that the Court had not suggested that the third category satisfied the requirements of the 14th amendment. (*Peterson* v. *City of Greenville,* 373, U.S. 244, 249 (1963).)

The senior Senator from Minnesota subsequently asserted that H.R. 7152 "does not rely upon the resolution of the constitutional questions presented in the third and fourth categories." (Ibid.)

He averred that H.R. 7152 "relates only to the first two categories, which have already been clearly interpreted as constitutional." (Ibid.)

The senior Senator from Minnesota concluded with the expressed hope that "we can concentrate our attention upon the first and second (categories) during the debate." (Ibid.)

The clear implication of his remarks is that title II will enact into positive Federal law only the first two cited categories of judicially defined concepts of "State action." But this lone senatorial expression of legislative intent is not in the least consistent with that expressed by other proponents of title II. Furthermore the language of subsection 201(d) as presently drafted is not precise language. Its current provisions are broad enough to include all four of the concepts of "State action" enumerated by the senior Senator from Minnesota. And the notorious proclivity of the majority of our nine judicial neighbors to the east to give effect to the widest possible application to so-called civil rights laws should dash any hopes that the current version of subsection 201(d) would not be applied to all four of these concepts.

So long as subsection 201(d) is comprised of such vague phraseology, experience, and logic dictate that we now must concentrate our attention on not just these four concepts, but every possible type of "State action" that is not specifically excluded in subsection 201(d).

THE SCOPE OF THE COMMERCE CLAUSE

The proponents of title II quite frankly admit that they are relying primarily on the commerce clause as their authority for imposing this yoke of servitude on the American businessman. Several opinions of the Supreme Court of the United States have been cited to portray the great and wondrous vistas of the commerce clause. It is true that the judicial artists have applied their pens in these opinions in broad sweeping strokes. But it does not necessarily follow that title II can be dubbed into this panorama of decisions without destroying the integrity of the constitutional canvas.

The cases most frequently cited include *Currin* v. *Wallace,* 306 U.S. 1 (1939), interpreting the Tobacco Inspection Act of 1935, 49 Stat. 731 (7 U.S.C. 511–511q (1958)); *United States* v. *Wrightwood Dairy,* 315 U.S. 110 (1942), interpreting sections 1 and 2 (d), (e), (f), (k), (l), (m) of the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 247 (7 U.S.C. 608c (1958)); *Mulford* v. *Smith,* 307 U.S. 38 (1939), *Wickard* v. *Filburn,* 317 U.S. 102 (1942), interpreting title III, part I of the Agricultural Adjustments Act of 1938, 52 Stat. 31, 45–48, as amended, March 26, 1938, 52 Stat. 120, April 7, 1938, 52 Stat. 775 (7 U.S.C. 1311–1315 (1958)); *United States* v. *Sullivan,* 332 U.S. 689 (1948), interpreting section 301(k) of the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040, 1042 (1938) (21 U.S.C. 331(k) (1958)); *United States* v. *Darby,* 312 U.S. 100 (1941) and *Mabee* v. *White Plains Publishing Co.,* 327 U.S. 178 (1946), interpreting the Fair Labor Standards Act of 1938, 52 Stat. 1060 (29 U.S.C. 201–219 (1958)).

The statutes which were the subject of these opinions have all been cited as "excellent precedents for sustaining measures concerning patronage of retail establishments, restaurants, places of amusement and the like." (Hearings, supra, 274–275.)

Another statute cited as precedent for this proposed public accommodations provision, but upon which there has been no ruling as to its constitutionality, is the act of March 16, 1950, regulating the intrastate sales of colored oleomargarine, 64 Stat. 20 (21 U.S.C. 347–347b (1958)).

Each of the cited statutes was intended to remove stated burdens on interstate commerce. Each act provided for the regulation of specified business practices as the means of effecting the removal of the cited burdens. Each measure was enacted to benefit directly certain classes of persons. The relief accorded the advantaged parties varied with the nature of the burden on interstate commerce sought to be removed.

RÉSUMÉ OF CITED STATUTORY PRECEDENTS

Tobacco Inspection Act of 1935

In the case of the Tobacco Inspection Act of 1935, the stated burden on interstate commerce was "unreasonable fluctuations in prices and quality determinations" of tobacco.

The means provided for the removal of the burden was the inspection and certification by an authorized representative of the Secretary of Agriculture prior to its being offered for sale at auction at a designated market.

The class of persons brought under regulation were tobacco producers generally and other persons engaged in the business of selling tobacco in interstate commerce at designated markets.

But before the regulations could become effective, the Secretary of Agriculture was required to determine by referendum whether the requisite number of tobacco growers who sold tobacco at auction on such market during the preceding marketing season desired the designation of their market for regulation. The act specified that no market or group of markets could be designated by the Secretary unless two-thirds of the growers voting favored designation (7 U.S.C. 511d (1958)).

The class of persons to be benefited by the imposition of the regulations were primarily tobacco producers and other persons engaged in selling tobacco in commerce.

The relief provided for in the act was the placing of tobacco growers (sellers) in position intelligently to deal with buyers of their crops.

Agricultural Marketing Agreement Act of 1937

In the case of sections 1 and 2 of the Agricultural Marketing Agreement Act of 1937, the declared burden on interstate commerce was the impairment of the purchasing powers of farmers and the destruction of the value of agricultural assets resulting from the disruption of the orderly exchange of commodities in interstate commerce.

The means provided for the removal of this burden was the fixing of classification standards and of the minimum prices to be paid to the producers of certain agricultural commodities in specified marketing areas.

The class of persons within the scope of the regulation were processors, associations of producers, and others engaged in the handling of any of the specified agricultural commodities or product thereof, in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate commerce in such commodity or product thereof.

But the producers in any specified market area could not be made subject to regulation unless and until it had been determined by the Secretary of Agriculture that price and quality controls were favored by the producers of at least two-thirds of the market volume in one circumstance, and by at least two-thirds of the producers in the area in all other situations. The Secretary was authorized to hold a referendum to make this determination (7 U.S.C. 608c (8) (9) (19) (1958)).

The class of persons to be directly benefited by such regulation was also the producers of the products specified.

The object of the act was the establishment and maintenance of such orderly marketing conditions of each of the specified agricultural commodities so as to provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices.

Agricultural Adjustment Act of 1938

In the case of title III, part I of the Agricultural Adjustment Act of 1938, the stated burden on commerce was the disorderly marketing of abnormally excessive supplies of tobacco.

The means provided for the removal of this burden was the establishment of national marketing quotas.

The class of persons brought under regulation was tobacco growers.

However, the marketing quota was not to become effective until the Secretary had conducted a nationwide referendum of farmers engaged in the growing of tobacco to determine whether they were in favor or opposed to such quotas. If more than one-third of the farmers voting opposed the establishment of national marketing quotas, no quotas would become effective (7 U.S.C. sec. 1312(c) (1958)).

The class of persons to be directly advantaged by the regulation was also the growers of tobacco.

The relief to be accorded to growers was the prevention of the production of abnormally excessive supplies and the indiscriminate dumping of such surpluses on the nationwide market.

Federal Food, Drug, and Cosmetic Act

The Federal Food, Drug, and Cosmetic Act did not include any formal exposition of the burdens on interstate commerce which it was intended to remove. However, a reading of the provisions of the act and a review of the House and Senate reports on the parent bill indicates that the subject burdens were "the adulteration, misbranding, and false advertisement of food, drugs, devices, and cosmetics in interstate, foreign, and other commerce subject to the jurisdiction of the United States." (S. Rept. No. 152, 75th Cong., 1st sess. 1; H. Rept. No. 2716, 75th Cong., 3d sess. 1; H. Rept. No. 2139, 75th Cong., 3d sess. 1.)

The means provided for the removal of these burdens was the prohibition of carrying on trade in adulterated or misbranded food, drugs, devices, and cosmetics in interstate commerce.

The class of persons brought under regulation were persons engaged in the production, distribution, and selling of food, drugs, devices, and cosmetics.

The class of persons to be benefited by the imposition of the regulations was the general consumer public.

The relief to be accorded was the safeguarding of the public health and the prevention of deceit upon the purchasing public.

Fair Labor Standards Act of 1938

In the case of the Fair Labor Standards Act of 1938, the stated burden on commerce was the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.

The means provided for removing this burden was the prohibition of (1) the employment of employees in interstate commerce at other than prescribed wages and hours, and (3) the employment of oppressive child labor.

The class of persons brought under regulation were employers "engaged in commerce or in the production of goods for commerce."

As originally enacted, the act provided that the minimum wage and maximum hour provisions shall not apply with respect to "(1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator [of the Wage and Hour Division]); or (2) any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce." (Fair Labor Standards Act of 1938, sec. 13(a), 52 Stat. 1067 (29 U.S.C. 213(a) (1958)).)

The class of persons to be benefited by the imposition of the labor standards were employees of employers "engaged in commerce or in the production of goods."

The relief provided was the establishment of minimum wage, overtime pay and child labor standards. However, as noted above, certain categories of employees were initially—and others subsequently—explicitly excluded from the wage and hour provisions of the act.

Oleomargarine sales act

In the case of the act of March 16, 1950, regulating the sale of colored oleomargarine, the declared burden on commerce was the sale, or the serving in public eating places of colored oleomargarine or colored margarine without clear identification as such or which is otherwise adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040 (7 U.S.C. 301 et seq. (1958)).

The means provided for the removal of this burden was to require all public eating places serving colored oleomargarine (1) to display prominently on the premises or to have printed on its menus a notice that colored oleomargarine is served; and (2) to identify each individual serving of colored oleomargarine by labeling it as such or by serving it in a triangular shape.

The class of persons brought under regulations was the owners and/or operators of public eating places.

The class of persons to be advantaged was the patrons of public eating places.

The relief to be accorded to patrons of public eating places was their being put on notice that they would be served colored oleomargarine.

DISTINGUISHING FEATURES OF CITED STATUTORY PRECEDENTS

In enacting these previous statutes, the Congress has enabled the Federal Government to take over "local radiations in the vast network of our national economic enterprise and thereby [to] radically readjust * * * the balance of State and national authority." "See *Kirschbaum* v. *Wallong,* 316 U.S. 517, 522 (1942).)

But in each of these acts the Congress did include provisos and exemptive sections which actually restricted their apparent scope and in some instances even made their application elective for those persons to be made subject to their provisions. The proposed public accommodations law does not contain any such meaningful hallmarks of temperance and wisdom.

The restraints of title II would be peremptorily applied to the operations of the designated categories of business establishments. It does not provide for any minimum cutoff limit of annual sales or gross income. It is intended to envelop within its reach, without exception, purely local and small business establishments. It would impose on the operators of affected business establishments a federally enforcible unilateral duty to serve certain classes of persons without these businessmen being granted any compensating rights for this loss of discretion to select their patrons and customers.

Categories of persons within the purview of the Tobacco Inspection Act of 1935, supra, the Agricultural Marketing Agreement Act of 1937, supra, and title III, part 1 of the Agricultural Act of 1938, supra, would not become subject to the regulation provided for unless and until it had been determined from a referendum among the respective classes of producers that a requisite majority of those voting favored the imposition of such regulation on their activities.

Under the provisions of the Tobacco Inspection Act of 1935, supra, the producer (vendor), upon becoming subject to inspection and certification regulations, was to be put "in position intelligently" to bargain with a vendee. But in so doing, the Congress did not purport to impose any additional duties on this other party or to deprive him of any of his usual rights as would be the case upon the enactment of the public accommodations bills. The benefited party was not to be elevated to a position from which he could compel the other party to deal with or to serve him.

The Fair Labor Standards Act of 1938, supra, as originally enacted provided for the exemption from its minimum wage and overtime provisions employees of retail or service establishments engaged primarily in trading in instrastate commerce. These exemptions were put into the act in full view of its stated design "to extend the frontiers of social progress by 'insuring to all our able-bodied working men and women a fair day's pay for a fair day's work.' "

Notwithstanding the recited urgent need for remedying a grave national problem affecting wage earners, the Congress saw fit to exclude certain categories of employees from the scope of the act. The exemption section was "the offspring of a manifest desire to exclude from the scope of the act 'business in the several States that is of a purely local nature.' * * * Congress was interested in exempting those regularly engaged in local retailing activities and those employed by small local retail establishments, epitomized by the corner grocery, the drugstore, and the department store. * * * It felt that retail concerns of this nature do not sufficiently influence the stream of interstate commerce to warrant imposing the wage and hour requirements on them. * * * Section 13(a)(2) is a part of the act only because of the fear that section 13(a)(1), in exempting employees regularly engaged in a 'local retailing capacity, did not clearly exclude those employed by local retailers who are situated near State lines and who make occasional interstate sales.' " (*Phillips Co.* v. *Walling,* 234 U.S. 490, 497 (1945).)

The exemption section of the act is currently interpreted by the Wage and Hour and Contracts Divisions of the Department of Labor to apply to the following categories of employees:

"Employees of retail or service establishments which are primarily engaged in selling automobiles, trucks, or farm implements; and employees of any of the following which are retail or service establishments that make most of their sales within the State; hotels, motels, restaurants, motion picture theaters, seasonal amusement recreational establishments, hospitals and nursing homes, schools for handicapped or gifted children; other retail or service establishments which have less than $250,000 in annual sales exclusive of specified taxes; or if the enterprise of which they are a part has less than $1 million in gross annual sales exclusive of specified taxes or procure less than $250,000 annually in goods for resale that move or have moved across State lines. Employees of retail or service establishments who are employed primarily in connection with certain food or beverage service." (Department of Labor, Wage and Hour and Public Contracts Division, Handy Reference Guide to the Fair Labor Standards Act 6–7 (Reprint April 1963).)

The purpose of the oleomargarine sales act, supra, was to protect "consumers from the danger that oleomargarine, because of its similarity to butter, might be misrepresented as butter to unwary customers." *United States* v. *Rutstein,* 163 F. Supp. 71, 74 (S.D.N.Y. 1958). It provides for "ample and thorough protection to the general public in retail establishments." (Id. at 77, quoting 96 CONGRESSIONAL RECORD 3017 (1950).) The protection provided was the requirement that colored oleomargarine must be clearly identified as such when it is sold to or served to the public.

The act did not take away the right of the operator of a public eating place to discriminate in his choice of table spreads. It did not require him to serve his patrons a particular product, butter. It did not take away his right to serve colored oleomargarine. The act charged him only with the duty to put potential customers on notice that colored oleomargarine was being sold or served on the premises.

The purpose of the Federal Food, Drug, and Cosmetic Act, supra, was to prevent abuses of the consumer welfare. The main protection provided by the act was the requirement of accurate and truthful labeling of the designated commodities. As in the case of the Oleomargarine Sales Act, supra, the vendor was charged only with the duty to give the potential customers adequate notice of the nature of the product being sold.

SUMMARY OF DISTINGUISHING FEATURES

Not one of these acts provided for any restriction of the right of the operator of a business to select his customers or patrons. The Tobacco Inspection Act of 1935, the Federal Food, Drug, and Cosmetic Act, and the Oleomargarine Sales Regulation Act did affect some practices in the merchandising of certain commodities. Only the latter two acts actually imposed obligations on the vendor for the benefit of the consumer. These obligations constituted a duty to extend to customers a warranty of the quality, quantity, and condition of merchandise held out for sale by the seller. But the affected businessmen were not placed under any servitude to sell their merchandise on a nondiscriminatory basis. There was no compulsion to sell nor any requirement to serve inherent in the enforcement of any of these acts which have been relied upon so heavily to rationalize the enactment of a public accommodations law under the commerce clause.

CITED STATUTES NOT LEGITIMATE PRECEDENT

In light of the legislative and administrative history of these laws previously passed by the Congress under the authority of the commerce clause, the invocation of that clause in this instance would be an unprecedented exercise of that authority. Since there was no compulsion to deal inherent in the enforcement of these acts upon either one of the two parties to a transaction, they cannot stand as a legitimate precedent for the giant step that would be taken in the enactment and enforcement of the provisions of the proposed public accommodations law.

PROHIBITION OF DISCRIMINATION UNDER AUTHORITY OF COMMERCE CLAUSE

Legislation enacted under the authority of the commerce clause has been applied to prohibit discrimination on account of race or color in the operation of a business. But this particular use of the commerce power has been limited so as to apply only to the operations of a unique category of businesses, namely, common carriers. Rail car-

riers, by 49 U.S.C. 3(1) (1958), motor carriers by 49 U.S.C. 316(d) (1958), and air carriers by 49 U.S.C. 1374(b) (1958), are all forbidden "to subject any particular person * * * to * * * any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Each of these provisions has been construed to forbid discrimination on account of race or color by common carriers in services provided to passengers: rail carriers, in *Mitchell* v. *United States*, 313 U.S. 80 (1941), and *N.A.A.C.P.* v. *St. Louis-San Francisco Ry. Co.*, 297 I.C.C. 335; motor carriers, in *Boynton* v. *Virginia*, 364 U.S. 454 (1960), and *Keys* v. *Carolina Coach Co.*, 64 M.C.C. 769; and air carriers, in *Fitzgerald* v. *Pan American World Airways*, 229 F. 2d 499 (2d Cir. 1956).

The greatest extension of this application of the commerce power occurred in the case of *Boynton* v. *Virginia, supra*. There the Supreme Court held that a restaurant located in a bus terminal, although not owned or actively operated or directly controlled by a bus company, must make its facilities and services available to an interstate patron of the bus company without regard to race or color. The Court declared that "here, without regard to contracts, if the bus carrier has volunteered to make terminal and restaurant facilities and services available to its interstate passengers as a regular part of their transportation, and the terminal and restaurant have acquiesced and cooperated in this undertaking, the terminal and restaurant must perform these services without discriminations prohibited by the [Interstate Commerce] Act. In the performance of these services under such conditions the terminal and the restaurant stand in the place of the bus company in the performance of its transportation obligations." (Id. at 460–461.)

The Court was prompted to stake off the boundary of its ruling and stated that "We are not holding that every time that a bus stops at a wholly independent roadside restaurant the Interstate Commerce Act requires that restaurant service be supplied in harmony with the provisions of this act. We decide only this case, on its facts, where circumstances show that the terminal and restaurant operate as an integral part of the bus carriers' transportation service for interstate passengers." (Id. at 463–464.)

The Supreme Court so circumscribed its interpretation of the antidiscrimination provision of the Interstate Commerce Act in full knowledge that the "services" and "transportation" to which the section applied included "all facilities and property operated or controlled by any such carrier or carriers, and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith." (Id. at 460.)

The antidiscrimination section of the act was held to apply only to the operation of a terminal and restaurant as an "integral part of [a common] carrier's transportation service for interstate passengers." (Ibid.) It was not construed to apply to terminal and restaurant services utilized by a common carrier "merely on a sporadic and occasional basis." (Id. at 462.) This use of the commerce power did not affect the operation of a "wholly independent roadside restaurant." (Id. at 463.)

The authority of the commerce clause was sought to be invoked in a lawsuit to prohibit racial discrimination in a Howard Johnson's restaurant in Alexandria, Va. The plaintiff had alleged that the defendant restaurant was engaged in interstate commerce because it was located beside an interstate highway and served interstate passengers. *Williams* v. *Howard Johnson's Restaurant*, 268 F. 2d 845 (4th Cir. 1959). He argued that "the commerce clause of the Constitution (art. I, sec. 8, cl. 3), which empowers Congress to regulate commerce among the States, is self-executing so that even without a prohibitory statute no person engaged in interstate commerce may place undue restrictions upon it." (Ibid.)

The plaintiff cited in support of his argument judicial opinions in which racial discrimination by common carriers had been held to be unlawful. These cases represented two lines of authority for such a holding: first, that the discrimination was in violation of the antidiscrimination section of the Interstate Commerce Act (49 U.S.C. 3(1) (1958)) and second, that such discrimination constituted an undue burden upon interstate commerce in violation of the commerce clause of the Constitution.

The Court took judicial notice of the cases cited by plaintiff in supporting his contentions, but observed that "In every instance the conduct condemned was that of an organization directly engaged in interstate commerce and the line of authority would be persuasive in the determination of the present controversy if it could be said that the defendant restaurant was so engaged." (Id. at 848.)

The Court then rules that the cases cited were not applicable to the operation of the defendant restaurant because it had not been shown to be engaged in interstate commerce.

The Court held that the Howard Johnson Restaurant was "an instrument of local commerce not subject to the commerce clause" and "at liberty to deal with such persons as it may select." (Ibid.)

The Court predicated its ruling on the explicit premise that a restaurant should not be considered to be engaged in interstate commerce "merely because in the course of its furnishing accommodations to the general public it serves persons who are traveling from State to State." (Ibid.)

And in the Slack case, supra, the Negro plaintiff had also sought relief on the ground that the "defendant [was] engaged in interstate commerce, that its restaurant [was] an instrumentality of interstate commerce and thus subject to the constitutional limitations imposed by the Commerce clause * * * and that defendant's refusal to serve plaintiff, a traveler in interstate commerce, constituted an undue burden on that commerce." (*Slack* v. *Atlantic White Tower System*, 181 F. Supp. 124, 128–29 (D. Md. 1960).)

The district court cited the Williams case, supra, and rejected this contention. The complaint was dismissed and the plaintiff appealed.

On appeal the only question considered was "what effect, if any, does the Supreme Court's recent decision in *Boynton* v. *Virginia*, have upon the holding of the *Williams* case." (*Slack* v. *Atlantic White Tower System*, 284 F. 2d 746 (4th Cir. 1960).)

The circuit court found that the Boynton decision had not affected the holding of the Williams case and affirmed the dismissal of the complaint. It took judicial notice of the Supreme Court's express declaration in the Boynton opinion that "We are not holding that every time a bus stops at a wholly independent roadside restaurant the Interstate Commerce Act requires service be supplied in harmony with the provisions of this act." (Ibid.)

Those who maintain that the public accommodations section of the Civil Rights Act falls within the legislative power of Congress ignore the historical purpose of the commerce clause, and they ignore the limitations placed upon this power. The father of our Constitution, in explaining the meaning of the commerce power, wrote that "It is very certain that [the commerce clause] grew out of the abuse of the [commerce] power by the importing States in taxing the nonimporting, and was intended as a negative and preventive provision against injustice among the States themselves, rather than as a power to be used for the positive purposes of the General Government." (IV Madison, Letters and Other Writings, pp. 14–15 (Phila. 1865).)

Thus Madison unequivocally stated that the commerce clause was intended as a prohibition upon unreasonable regulation of commerce by the individual States. James Madison was the only delegate to the Philadelphia Convention who kept complete notes on all proceedings, and he is rightly referred to as more nearly the author of our Constitution than any other single individual. His words are entitled to great respect.

In the early case of *Gibbons* v. *Ogden*, 9 Wheat. 1 (1824), the Supreme Court handed down a celebrated decision announcing that the State of New York did not have power to grant a monopoly to one or more individuals operating vessels on the coastal waters of that State. The decision was based directly upon the commerce clause, and contains some broad language as to the power of Congress under the commerce clause. In 1942, 118 years after *Gibbons* v. *Ogden* was decided, the Supreme Court said, "At the beginning Chief Justice Marshall described the Federal commerce power with a breadth never yet exceeded [citing *Gibbons* v. *Ogden*]." (*Wickard* v. *Filburn*, 317 U.S. 111, at 120 (1942).)

In this simple manner error is created. In *Gibbons* v. *Ogden* the question was whether a State had gone beyond the restrictions imposed upon it by the commerce clause. The Court could easily have cited the words of Madison, that the commerce clause is "a negative and preventive provision against injustice among the States themselves." While Marshall's dictum reached beyond the facts before him, the decision itself was strictly within the intent of the authors of the Constitution: Commerce among the States should be free, unrestricted by discriminatory State regulation.

This negative aspect of the commerce clause was the dominant issue in a vast majority of the commerce cases heard by the Supreme Court prior to 1900. Not until passage by Congress of the Interstate Commerce Act of 1887 did the balance begin to shift in the other direction toward controversies relating to the affirmative power of the Federal Government under the commerce clause. Although a number of cases had upheld this affirmative power, as late as 1918 there was still validity to the doctrine that the commerce clause conferred only limited power on the Federal Government. In *Hammer* v. *Dagenhart*, 247 U.S. 251 (1918), the question before the Court was whether Congress, under the commerce clause, could prohibit interstate shipment of goods manufactured by use of child labor working under conditions contrary to those prescribed by congressional legislation. A father had brought suit on behalf of his sons claiming the legislation was void because it was directed to a matter—manufacturing—over which Congress had no constitutional authority.

The father's brief before the Supreme Court relied upon the words of Madison, that the commerce power is a negative power, 247 U.S. at 260, and pointed out that Congress was seeking to manage the internal affairs of the States and their citizens. Although the decision in which the Court sustained this argument has since been overruled, the following language of the Court has vitality:

"The far-reaching result of upholding the act cannot be more plainly indicated than by pointing out that if Congress can thus regulate matters entrusted to local authority by prohibition of the movement of commodities in interstate commerce, all freedom of commerce will be at an end, and the power of the States over local matters may

be eliminated, and thus our system of government be practically destroyed" (247 U.S. at 276).

To review briefly, the intent of the framers of our Constitution was to eliminate diverse State regulation of commerce among the States and in this manner to secure the utmost in free commercial intercourse on a broad scale in the new nation. Congress, by its legislation in the first century following ratification of the Constitution, adhered generally to this interpretation of the commerce clause. And as recently as 1918, the Supreme Court rendered its decision striking down the extremely broad power claimed by Congress over commerce on the ground that such an extensive power in the hands of Congress would bring to an end all freedom of commerce.

The interpretation of the commerce clause thus exemplified is more than the historical interpretation—it is the realistic and intelligent interpretation. And only the most vivid of imaginations could conclude that the civil rights bill would find any support in this interpretation of our charter of government.

CURRENT CONSTITUTIONAL INTERPRETATIONS

"It Is the Essence of this [Commerce] Power That, Where It Exists, It Dominates" (*Shreveport Rate Case*, 234 U.S. 342).

"The Federal Commerce Power Is As Broad as the Economic Needs of the Nation" (*American Power & Light Co.* v. *Securities & Exchange Commission*, 329 U.S. 90, 104).

The most cursory analysis reveals that, if the Federal commerce power exists whenever there is an economic need, and further, if that power dominates wherever it exists, we are dealing here with an awesome power indeed. The fact is, of course, that the Federal commerce power has become extremely broad during the last half century, but at the present writing this power is not without limits.

There are several different facets of the commerce power, and perhaps it would be well to distinguish and define the facet of that power which will be dealt with in this portion of our analysis.

First, we are not dealing with the effect of the commerce clause upon State action that affects commerce among the States. This is the negative aspect of the commerce power, the aspect that strikes down burdensome State-imposed restrictions on interstate commerce, and clearly does not apply in this instance.

Second, we are not here dealing with the power of the Federal Government to support by financial means programs that are intended to promote commerce among the States.

Thus, the power here under discussion, defined as narrowly as possible, is the affirmative power of Congress to regulate private activities in the field of commerce. Therefore, the only cases in point are those that define this regulatory power of Congress.

In 1851, the Supreme Court sustained the power of Congress to regulate the building of bridges over natural streams, *Pennsylvania* v. *Wheeling Bridge Co.* (13 How. 518 (1851)), and the regulatory power of Congress has been sustained on a great number of cases since that date. In 1903, an act prohibiting interstate commerce in lottery tickets was upheld. (*Champion* v. *Ames*, 188 U.S. 321 (1907).) There followed a succession of cases holding that Congress could regulate commerce among the States with respect to adulterated foods (*Hipolite Egg Co.* v. *United States*, 220 U.S. 45 (1911)), women transported for immoral purposes (*Hoke* v. *United States*, 227 U.S. 308 (1913)), intoxicating liquors (*Clark Distilling Co.* v. *United States*, 242 U.S. 311 (1917)), and stolen vehicles (*Brooks* v. *United States*, 267 U.S. 432 (1925)).

In 1905, the Court upheld the Sherman Antitrust Act, on the ground that monopolies operating in the current of commerce have a significant and stifling effect on commerce among the States. *Swift & Co.* v. *United States*, 196 U.S. 375 (1905). It is quite accurate to say that the affirmative power of Congress to regulate the current of commerce among the several States has not been seriously questioned in recent years.

In *National Labor Relations Board* v. *Jones and Laughlin Steel Corp.*, 301 U.S. 1 (1937), the Court substantially expanded the commerce clause by upholding the National Labor Relations Act. The act in question is based upon the power of Congress to regulate generally all labor-management relations in industries of any substantial size. In upholding the act, the Court noted that the act does not operate directly upon the current of commerce, but held that labor-management relations do, as a matter of fact, have an enormous effect upon the flow of commerce among the States. Accordingly, said the Court, Congress acts within its proper sphere of power when it undertakes to regulate labor-management relations.

The Court further expanded this concept of the power of Congress to regulate the flow of commerce in *Wickard* v. *Filburn*, 317 U.S. 111 (1942), when it was held that Congress can constitutionally regulate the use of private farmland for private purposes. In that case the farmer had planted wheat for his own use in feeding his farm animals, and he argued that such a use of his property could not constitutionally be subjected to regulation by Congress. The Court, however, noted that millions of acres of wheat are planted for private use each year, and if Congress cannot regulate this activity, the unrestrained activity of farmers would have a significant effect upon commerce in grain. The Court held that, because the current of commerce would be substantially affected, the power of Congress to regulate commerce among the States could constitutionally be brought into play.

The decisions mentioned and discussed above are by no means all the decisions, or even all the important decisions, rendered by the Supreme Court in the last few decades respecting the commerce power of Congress. These decisions are mentioned simply as a brief review of the Court's reasoning in dealing with the commerce clause. The review is brief because a full discussion of the commerce power would of necessity involve the discussion of every case decided on this point—and when this task was done, it would still be necessary to make an educated guess as to whether the proposed Civil Rights Act would be upheld by the Supreme Court.

The fact is that the Court must, in order to sustain the power of Congress to regulate a given field of activity, find that the activity has a substantial effect upon the current of commerce among the States. If there is involved no current of commerce among the States, or if the activity sought to be regulated has no substantial effect upon a current of commerce among the States, Congress has no power to act.

In the first group of cases mentioned in this section, the fact is abundantly clear that Congress sought to regulate a current of commerce among the States. For example, when Congress puts a stop to interstate commerce in adulterated foods, the mind's eye can see that the current of commerce among the States is materially altered by the congressional regulation. The same is true of congressional regulations respecting interstate commerce in intoxicating liquors—the mind can comprehend that this regulation affects the current of commerce as it moves from State to State. And the same reasoning applies in the case of interstate movement of lottery tickets, stolen vehicles, and transportation of women across State lines for immoral purposes.

The picture is not quite so clear in the cases upholding the National Labor Relations Act. There the principal force of the act is directed toward requiring adherence to certain labor practices in the industries affected—the act in effect establishes labor standards to be followed in the manufacturing plants themselves. In this respect alone it is difficult to see any direct impact on the current of commerce among the States. The act passed its great test when the court, in *NLRB* v. *Jones & Laughlin Steel Co.*, 301 U.S. 1, held that an activity is subject to congressional regulation if, when viewed realistically, that activity has a substantial indirect effect on commerce among the States. The court has never accurately defined what is such a substantial effect, but has left that matter to be determined on the facts of each case. It is interesting to note, however, that in the Jones & Laughlin case, the Court emphasized that the purpose of the act was to eliminate obstruction to the "free flow of commerce." (Id. at 23.) The Court made it a point to bring out that the company drew raw materials for its products from other States; that approximately 75 percent of its products were shipped to States other than that in which its plants were located; and that these products were shipped out "to all parts of the Nation" in interstate commerce. (Id. at 27.) The Court concluded that the activity sought to be regulated truly had an important effect upon commerce among the States. But the Court had this to say about overreaching the commerce power vested in Congress: "Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." (301 U.S. at 37.)

It will be well to bear these words in mind as we consider the indirect and remote effects on interstate commerce dealt with in the proposed Civil Rights Act.

The Court very possibly reached the outer limits in describing which basically local activities have a substantial effect upon commerce among the States when it decided that a farmer is subject to congressional regulation when he plants an acre of wheat for consumption by his own livestock on his own farm. *Wickard* v. *Filburn*, 317 U.S. 111 (1942). At first glance, the case appears to hold that even the sale of a dollar's worth of any given merchandise would qualify as having a substantial effect on interstate commerce, but closer analysis leads to quite a different conclusion.

The legislation examined in that case was the Agricultural Adjustment Act of 1938, which sought, among other objectives, to maintain a stable market in wheat. Quite clearly, if there were several factors which determined the supply of wheat and the demand for wheat, and if all except one of these factors were constant, that single factor would be the factor that substantially affected commerce. If that factor moved in one direction, commerce among the States in wheat would be stifled by a surplus; if that factor moved in the other direction, the interstate currents of commerce in wheat would be broken by shortages.

After noting that in some States only 29 percent of the wheat crop was planted for market purposes, the Court pointed out that "The effect of homegrown wheat on interstate commerce is due to the fact that it constitutes the most variable factor in the disappearances of the wheat crop. Consumption on the farm where grown appears to vary in an amount greater than 20

percent of average production. The total amount of wheat consumed as food varies but little, and use as seed is relatively constant." (Id. at 127.)

Thus the Court found not only that the wheat crop regulated in this manner constituted 20 percent of the total crop, but that this 20 percent was the single most important factor in determining whether, during any given year, there would be a surplus or a shortage in the wheat supply. On this reasoning, the substantial effect on the current of commerce among the States is plain for all to see.

I must make it clear at this point that I am by no means in full agreement with the Court's interpretation of the commerce clause. I have discussed the Court's decisions and followed its reasoning for the sole purpose of promoting some understanding of what activities may properly be regulated by Congress in its exercise of the commerce power, in the light of current decisions of the Supreme Court.

I conclude that title II of the proposed Civil Rights Act does not fall within the proper power of Congress as now defined by the Supreme Court.

Clearly the proposed act is not intended to operate directly upon the current of commerce among the States. No one is prohibited by the act from moving in the current of commerce; nor are any goods prohibited from interstate movement; nor is there any regulation of such movement of goods or people. The only regulation takes place outside the current of commerce.

Therefore, the case for the proposed act stands or falls upon the question whether the activities regulated have a substantial and burdensome indirect effect upon commerce among the States, and the testimony in support of the legislation on this point falls far short of the mark. It may well be established that there is discrimination, not only based upon race, but discrimination of all kinds, in places defined in this bill as places of public accommodation. But there is no evidence that there is a substantial burden, or any burden, placed upon commerce among the States, which would be removed by enactment of the Civil Rights Act. I defend, with all the power at my command, the citizen's right to discriminate. However shocking the proposition may sound at first impression, I submit that under one name or another, this is what the Constitution is all about. The right is vital to the American system. If this be destroyed, the whole basis of individual liberty is destroyed. The American system does not rest upon some "right to be right," as some legislative majority may define what is "right." It rests solidly upon the individual's right to be wrong—upon his right in his personal life to be capricious, arbitrary, prejudiced, biased, opinionated, unreasonable—upon his right to act as a freeman in a free society.

Whether this right is called the right of free choice, or the right of free association, or the right to be let alone, or the right of a free marketplace, this right is essential. Its spirit permeates the Constitution. Its exercise colors our entire life. When a man buys union-made products, for that reason alone, as opposed to nonunion products, he discriminates. When a Virginian buys cigarettes made in Kentucky or North Carolina, he discriminates. When a housewife buys a nationally advertised lipstick, for that reason alone, as opposed to an unknown brand, she discriminates. When her husband buys an American automobile, for that reason alone, as opposed to a European automobile, he discriminates. Every one of these acts of "discrimination" imposes some burden upon interstate commerce.

The examples could be endlessly multiplied. Every Member of this body will think up his own examples from the oranges of Florida to the potatoes of Idaho. And the right to discriminate obviously does not end with questions of commerce. The man who blindly votes a straight Democratic ticket, or a straight Republican ticket, is engaged in discrimination. He is not concerned with the color of an opponent's skin; he is concerned with the color of his party. Merit may have nothing to do with it. The man who habitually buys the Times instead of the Herald Tribune, or Life instead of Look, or Leonard Bernstein instead of Elvis Presley, is engaged in discrimination. Without pausing to chop logic, he is bringing to bear the accumulated experience—the prejudice, if you please—of a lifetime. Some nonunion goods may be better than some union goods; some Democrats may be better than some Republicans; some issues of Look may be better than some issues of Life. None of this matters. In a free society, these acts of prejudice, or discrimination, or arbitrary judgment, universally have been regarded as a man's right to make on his own.

The vice of title II is that it tends to destroy this concept by creating a pattern for Federal intervention. For the first time, outside the fully accepted area of public utilities, this bill undertakes to lay down a compulsion to sell.

And here an important question should be raised: if there can constitutionally be a compulsion to sell, why cannot there be, with equal justification, a compulsion to buy? In theory, the bill is concerned with "burdens on and obstructions to" commerce. This bill proceeds upon the theory that the owner of the neighborhood restaurant imposes an intolerable burden upon interstate commerce if he refuses to serve a white or Negro customer, as the case may be. But let us suppose that by obeying some injunction to serve a Negro patron, the proprietor of Clancy's Grill thereby loses the trade of 10 white patrons. In the South, such a consequence is entirely likely; it has been demonstrated in the case of southern movie houses. Can it be said that the refusal of the 10 white persons imposes no burden on interstate commerce? Plainly, these 10 intransigent customers, under the theory of this bill, have imposed 10 times as great a burden on commerce among the several States. Shall they, then, be compelled to return to Clancy's for their meals? Where does this line of reasoning lead us?

This line of reasoning leads me to an absolute conviction that the proposed legislation is, at the very least, the most harmful piece of legislation to be considered by the Senate during this session.

THE ROLE OF CONGRESS

It is reported that President Jackson once said of a Supreme Court opinion, "John Marshall has made his decision—let him enforce it." This emphasizes a point that is much in need of emphasis.

The idea has gained much support that the U.S. Supreme Court bears the full responsibility of interpreting the Constitution. Nothing could be further from the truth. Both the Congress and the President have a similar responsibility, with perhaps more emphasis on the responsibility of Congress, because it is the deliberative representative body.

When President Jackson denied Executive support to the Court's decision, he effectively shouldered the Executive's responsibility of interpreting the Constitution. This is an entirely proper, and indeed, essential function of the Executive provided that such serious action is taken only when the Court has clearly misinterpreted its role.

The function of Congress in interpreting the Constitution is at least as important as the function of the Court, because Congress considers the question long before it is heard by the Court. The first duty of every Member of Congress in considering proposed legislation is to ask himself, "Is it within my power, under the Constitution, to support and enact this legislation?" If a majority of Members of either House answer this question in the negative, the Supreme Court never has the opportunity to pass on the constitutional question. Only if Congress enacts the legislation can the Supreme Court consider its constitutionality, and, as a practical matter, much congressional legislation is never challenged on constitutional grounds.

Applying these principles and thoughts to the proposed Civil Rights Act, there is much for the Senate to consider on constitutional grounds, as well as from the practical aspect. I can hardly conceive of any Senator lightly casting his vote in favor of legislation which, by its very terms, will govern with an iron hand the private preferences of the druggist on the corner. A vote in favor of this legislation would put the local hotdog stand, the local millinery shop, perhaps even the local shoeshine boy, in the same class with the great public utilities, who because of their monopoly status must serve all customers desiring service.

If Congress constitutionally can pass this act, Congress can require virtually all businesses to serve all customers all day every day. The decision of the local grocer to close his store on New Year's Day then becomes the responsibility of Congress. As a matter of fact, the widespread closing of businesses on New Year's Day clearly constitutes a greater burden on commerce among the States than the practices to be prohibited by title II of the proposed Civil Rights Act.

One of the most objectionable aspects of this legislation is the method of its enforcement, by injunction, at the instance of the Attorney General, with no right to trial by jury.

This means that, after meeting certain conditions, the Attorney General may, if he thinks some owner or proprietor plans to violate the act, bring an injunction suit in the name of the United States. If the injunction is granted and violated, the owner or proprietor may find himself in jail for an indefinite period of time, without ever having had a jury trial.

The Civil Rights Act, though it purports to offer a remedy in civil law, is by any objective analysis a penal statute. In effect, it defines a crime, and provides a method by which punishment may be given. Yet there is no jury trial.

The sixth amendment to our Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."

The proposed act circumvents this portion of our Bill of Rights by relying on the technicality that this legislation provides a civil remedy. Reliance upon a technicality in order to deprive citizens of liberty without a trial by jury is hardly a commendable approach to any problem, and especially to a problem concerning civil rights. It is a factor to be considered by Senators. In my opinion this factor alone should be enough to defeat the legislation.

The fifth amendment to our Constitution provides that "No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

It is clear that the proposed Civil Rights Act will, if it passes Congress, deprive our citizens of liberty without due process of law. A trial before a Federal court, sitting without a jury, does not constitute due process of law in this situation for the reasons set forth, respecting trial by jury.

But if this be doubted by anyone, surely no one can doubt that the proposed law would take private property for public use without just compensation. Restaurants, hotels, hotdog stands, millinery shops, and the thousands of other businesses to be affected by the act are private property. The

act would subject this private property to use by all the public without regard for the wishes of the owners of the private property. Aside from constituting a direct and irreconcilable violation of our Bill of Rights, this aspect of the proposed act violates the cardinal principle of liberty that has restrained despotic governments since the days of Magna Carta. This alone should be sufficient to dismiss this portion of the proposed legislation from further consideration.

These are some of the objections to the act that we simply cannot overlook or treat lightly. We cannot ignore the words of Madison; we cannot ignore the great principles of our Bill of Rights; and we cannot ignore the words of the Supreme Court that the commerce power may not be extended to obliterate the distinction between what is national and what is local.

ALLEGED NEED FOR PUBLIC ACCOMMODATIONS LAW

Promotion of commerce

An alleged need for title II is set forth within a "commercial and economic" context in part 2 of the report of the House Committee on the Judiciary on H.R. 7152. Part of this discussion was a résumé of some of the testimony in support of a Federal public accommodations law by the Under Secretary of Commerce and the Secretary of Labor before the Senate Committee on Commerce.

Testimony of Under Secretary of Commerce

The Under Secretary of Commerce made broad allegations as to the effects of segregation in public accommodations on commerce. He also made extravagant claims as to the efficacy of such a statute.

In seeking to establish the effect of segregation in public accommodations on interstate travel, the Under Secretary of Commerce devoted the bulk of his testimony to the availability of accommodations for Negro travelers along certain selected routes in the South. His source of information on those facilities that did cater to Negro patrons was a travel guide entitled the "GO-Guide to Pleasant Motoring." Hearings, supra, 693. This guide contained "listings of hotels, motels, and other traveling facilities whose owners have stated in writing that their facilities are open to all desirable guests regardless of race, creed, or color." (Hearings, supra, 693-694.)

From this guide tables were made of the distances along the illustrative routes between listed "hotel-motel accommodations of 'reasonable' quality readily available to Negroes." (Id. at 694, 736–737.)

When questioned as to the source and accuracy of his statistics, the Under Secretary of Commerce stated that "This survey was taken from this book, this pamphlet called "GO". Frankly, this is not a complete survey. It does not indicate all of the places. It is a preliminary survey of places of reasonable quality. Quite frankly, it does not cover every place because some places are substandard." (Id. at 745.)

He subsequently acknowledged that "it [was] not an official survey." (Id. at 745.)

The Under Secretary of Commerce maintained that the tables demonstrated a lack of reasonable accommodations available to Negroes on the same basis as to white travelers. He asserted that this lack of equal access to presently segregated facilities limited interstate travel by Negroes (Id. at 695) and that if this legislation had been in effect there would have been a great increase in tourism by the Negro community. (Id. at 744.)

The Under Secretary of Commerce had claimed that, "In the amusement, restaurant, hotel, and motel industries, one can see a pattern of Negro spending that appears to be related more to the availability or nonavailability of desegregated facilities than to any special kinds of taste or conspicuous consumption." (Id. at 695.)

He produced some data intended to support this claim. This data consisted of a comparison of average family expenditures for admissions (to theaters and other recreational facilities), food eaten away from home, automobile operations, for three income classes in large northern and southern cities, by race for the year 1950. The figures were compiled from a "Study of Consumer Expenditure Income and Saving" tabulated by the Bureau of Labor Statistics of the Department of Labor during 1956–57 for the Wharton School of Finance and Commerce of the University of Pennsylvania. (Id. at 696.)

I invite your attention to the fact that the study upon which the Under Secretary rested his claim was published 6 years ago on the basis of statistics that are now 13 years old. And to the extent that this study is accepted as credible evidence of the effect of the availability of desegregated facilities on the expenditure patterns of Negro families, so must the study be accepted as credible evidence of the effect of desegregated facilities on the spending patterns of white families. (See table.)

CIVIL RIGHTS—PUBLIC ACCOMMODATIONS

Average family expenditure for admissions, food eaten away from home, and automobile operations, for 3 income classes, large northern and southern cities, by race, 1950

Income class and region	Admissions			Food eaten away from home			Automobile operation		
	Negro	White	Negroes percent of whites	Negro	White	Negroes percent of whites	Negro	White	Negroes percent of whites
$2,000 to $3,000:									
Large northern cities	$31	$29	107	$148	$184	80	$52	$86	60
Large southern cities	$23	$36	64	$113	$194	58	$52	$95	55
Northern expenditures as percent of southern	135	81		131	95		100	91	
$3,000 to $4,000:									
Large northern cities	$45	$37	122	$138	$170	81	$67	$158	42
Large southern cities	$37	$39	95	$117	$180	65	$86	$170	51
Northern expenditures as percent of southern	122	95		118	94		78	93	
$4,000 to $5,000:									
Large northern cities	$57	$48	119	$182	$234	78	$148	$220	67
Large southern cities	$39	$45	87	$166	$257	65	$136	$225	60
Northern expenditures as percent of southern	146	107		110	91		109	98	

Source: "Study of Consumer Expenditure Income and Saving," tabulated by Bureau of Labor Statistics, U.S. Department of Labor, for Wharton School of Finance & Commerce, University of Pennsylvania, Philadelphia, Pa., 1956–57.

The Under Secretary of Commerce declared that "These data * * * show that Negroes in large northern cities spend more than southern Negroes of the same income class in all of these expenditure categories listed above, even though white families in northern cities spend less than similar families in southern cities." (Id. at 695.)

He sought to create the impression that the lack of equal access to public accommodations in the South accounted for the lesser expenditures by southern Negro families and that this lack was therefore a burden on interstate commerce. But in the North where equal access to public accommodations did exist, white families in two of the three income classes actually spent less than their southern counterparts. Conversely, then, it must be presumed—and not unreasonably and not illogically—that the integration of the northern public accommodations was the discouraging factor for northern white families.

A member of the committee asked the Under Secretary to provide information pertaining to the present purchasing power of Negro citizens and their economic potential as it would be affected by this bill. The Under Secretary referred the question to one of his consultants for an answer. In responding to the question, the consultant referred to a study made by the President's Council of Economic Advisers.

The study referred to was an estimate of the economic loss to the United States resulting from racial discrimination in employment. It was prepared for the Joint Economic Committee of the Congress in response to questioning during hearings in 1962 by that committee on the Economic Report of the President. The Council's estimate was that the gross national product might rise by 2.5 percent (about $13 billion at today's levels of GNP) if the present educational attainment of nonwhites was fully utilized. Council of Economic Advisers, Economic Costs of Racial Discrimination in Employment 5 (Sept. 25, 1963). And "If nonwhites had the same educational levels as whites and if the economy fully utilized their education, GNP today might be perhaps 3.2 percent higher (inclusive of the 2.5 percent estimate reported above). This amounts to about $17 billion at today's levels of GNP." (Id. at 6.)

The consultant noted that the Council of Economic Advisers had "advanced these figures with some reservation because this is an extremely difficult thing to measure; the figures are rough estimates based on the Council's best judgment." (Hearings, supra, 757.)

He stated that since gross national product is not personal income, another estimate had to be made of what proportion of the increase in GNP would actually be attributed to an increase in personal income. He estimated the proportionate rise in personal income to be $9 to $13 billion. (Id. at 757–758.)

The consultant acknowledged that the proposed public accommodations bill alone would not account for the increment, but that the estimate was based on the hoped-for effects of all of the civil rights legislation, including the factors of greater opportunity of employment, education, and training. (Id. at 758.) The committee member then commented that "I am glad that the chairman has brought that out, because the framework of my question was limited to this bill. But I see now that that would be almost impossible to estimate. So it actually refers to the whole package of civil rights legislation." (Hearings, supra, 758.)

The Under Secretary of Commerce replied, "Yes, sir." (Id. at 758.)

A careful review of the testimony of the Under Secretary of Commerce will reveal that his documentation of his allegations as to the effects of segregation in public accommodations on interstate commerce was puny, stale, and even nebulous. And he

offered only conjectural evidence as to the efficacy of a public accommodations law to eliminate racial unrest and to foster economic growth.

Testimony of the Secretary of Labor

The Secretary of Labor testified before the Senate Committee on Commerce that "a public accommodations law, which will erase stigmas and remove barriers, will contribute immeasurably to the economy." (Hearings, supra, 623.)

This broad claim was made on the presumption that the enactment and the enforcement of a Federal public accommodations law would result in an expansion of the consumer market and the removal of the restraint of racial unrest on the expansion of old—and the influx of new—business.

The testimony of the Secretary of Labor in support of his contention that the integration of public accommodations would result in a great upsurge in the sales of goods and services fell far short of its mark. The bulk of the information submitted tended only to prove that integration would not result in any grave economic dislocations. The emerging pattern from places already integrated showed a loss of business when merchants first began to accept Negroes. "But experience shows that such adverse effects are rarely lasting." (Id. at 632.) "Even where business losses occur, they usually are only temporary." (Ibid.) Definite increases in business were positively reported to have occurred in the "convention market." (Id. at 633.) There was no concrete evidence of net increases in any other businesses.

Ironically, the Secretary of Labor discredited his own prediction of a great upsurge in Negro patronage when he declared that "One frequently expressed fear of southern white businessmen, that their establishments would be overrun by Negroes if they integrated, apparently is not materializing." (Ibid.)

He then quoted a Nashville banker in support of this development "The Negroes want the right to enter your place of business, but they're not anxious to use the right." (Ibid.)

And it was recently reported that in Chattanooga few Negroes have taken the trouble to test their new acceptance in that city's restaurants.

"Most of the important Negroes wanted the right to go to these places without the necessity of going to them." (Evening Star, Sept. 24, 1963, p. A–15, cols. 6 and 8.)

At the same time the Secretary of Labor was predicting a great upsurge in business as a result of Negroes patronizing previously segregated establishments, he was also contending that there would be no great rush of Negroes to patronize these very same places after they were integrated.

If this condition does prevail, it will be even further proof that segregation of public accommodations does not substantially burden interstate commerce and that the integration of such facilities will not result in any great increase of Negro patronage.

The Secretary of Labor did cite some instances in which firms had been discouraged from locating in southern areas by racial unrest. (Hearings, supra, 625–26.) But it was also developed during the course of his testimony that businesses had deserted areas already subject to public accommodations laws and other civil rights laws to locate in States not subject to such laws.

The Secretary of Labor's attention was called to a study made by a conference of economists of the Midwest. The area surveyed covered Ohio, Indiana, Illinois, Iowa, Michigan, Wisconsin and Minnesota. Public accommodations and fair employment laws are in effect in each of these States. The senior Senator from Ohio reviewed the findings of the study which showed that—

(1) Each of the States had lost in gross national product since 1953;

(2) The Southwest and the South were enjoying the greatest gain in economy;

(3) The migration of industry from the Midwest area has been the result of the changing procurement patterns of the Department of Defense; and

(4) The factors contributing to the other areas' growth were water supply, labor supply, climate, healthy governmental environment, and reasonable tax rates.

The senior Senator from Ohio then posed the following question to the Secretary of Labor: "why is Ohio losing—not growing—in population and losing industry, and why are Florida and Georgia and Alabama gaining?" (Id. at 646–647.)

The Secretary of Labor replied: "I share coming from Chicago, the concern about the problem which you express, and it is true that the movement has been from the Great Lakes area to these other parts of the country. I think the listing which you gave there from that study is a quite comprehensive listing and would parallel the factors which I would have in mind. I would not mean to commit any particular part of the list, and would be glad to respond to a question about any particular aspect of it. But that is a fair checklist you have there." (Id. at 647.)

The senior Senator from Ohio then made the following observation: "In Ohio we have had for years a law which compels certain public places to indiscriminately serve and sell. I learned that within the past 2 years an additional law has been passed that intends to eliminate the prejudicial discrimination. Yet we are losing. Why?" (Id. at 647.)

The Secretary of Labor replied: "Because of the other factors in the list to which you referred." (Id. at 647.)

And so here we are confronted with the anomaly that nonsouthern areas have lost business in spite of the enforcement of civil rights statutes and that Southern States have gained business in spite of the absence of such laws.

The Secretary of Labor had stated earlier in his testimony that he believed that "there has been an expansion of economic activity in the South which is unparalleled in most other places of the country unless it is California or one or two others—Texas." (Id. at 636.)

The Secretary subsequently declared that he could not conclude that segregation had not hurt the industrialization of the South because "It leaves the possibility that if it had not been for this, that rate of growth would have been infinitely larger." (Id. at 636.)

The Secretary of Labor did not substantiate his claim that the South's economic growth rate "would have been infinitely larger" in the absence of segregation. Neither did his testimony contain any information which would counterbalance the clear weight of the evidence that civil rights laws are not an effective vehicle for the elimination of racial unrest and for the stimulation of economic growth.

DATA INDICATING ECONOMIC GROWTH OF UNITED STATES SINCE 1940 ON A REGIONAL BASIS

Nonagricultural employment, by regions, 1940, 1957, and 1962

Region	Employment (annual averages in thousands)			Percent increase	
	1940	1957	1962	1940–62	1957–62
United States [1]	32,376.0	52,904.0	55,325.0	71	5
New England	2,726.1	3,648.1	3,790.8	39	4
Mideast	9,506.6	13,542.6	13,710.7	44	1
Great Lakes	7,378.7	11,722.8	11,646.3	58	−1
Plains	2,548.6	4,058.1	4,261.2	67	5
Southeast	5,105.8	9,082.1	9,903.0	94	9
Southwest	1,637.4	3,519.8	3,837.7	134	9
Rocky Mountain	610.9	1,114.0	1,265.1	107	14
Far West	2,707.7	5,896.3	6,708.2	148	14

[1] National totals differ slightly from sum of State totals.

Source: U.S. Department of Labor, Bureau of Labor Statistics.

Personal income, by regions, 1940, 1957, and 1962

Region	Amount (millions of dollars)			Percent increase	
	1940	1957	1962	1940–62	1957–62
United States	78,522	348,724	437,924	458	26
New England	6,398	22,793	28,523	346	25
Mideast	23,949	88,586	108,449	353	22
Great Lakes	17,818	78,469	92,404	419	18
Plains	6,515	28,099	35,216	441	25
Southeast	10,387	53,790	69,230	567	29
Southwest	4,090	23,697	30,170	638	27
Rocky Mountain	1,598	7,830	10,169	536	30
Far West	7,767	45,460	61,524	692	35

Source: U.S. Department of Commerce, Office of Business Economics.

PRESERVATION OF LAW AND ORDER

It has been stated that the existence of public accommodations laws in some 30 States and numerous cities indicated that this type of legislation was not extraordinary, but that "the failure of more States to take effective action makes it clear that Federal legislation is necessary." (H.R. Doc. No. 124, 88th Cong., 1st sess. 4–5 (1963).) The clear implication of these remarks was that public accommodations laws were being effectively enforced in the cited States and cities and that the proposed Federal law was intended to provide a similar remedy in those areas not already covered by such provisions.

According to the chairman of the Senate Committee on Commerce, "We are trying in effect to correct a need that exists in the States that don't have laws, for their own reasons, good or bad." (Hearings, supra, 251.)

The Governors of the several States were requested to comment on the administration's bill, S. 1732. Several Governors endorsed the proposed Federal legislation.

With one exception (Hawaii), they represented States in which antidiscrimination laws were already in effect. They, too, upheld the enactment of the proposed Federal law as a means of making similar provisions applicable to those States not already subject to such regulations. (E.g., Minnesota, hearings, supra, 1122, 1174; California, id. at 1157; Rhode Island, id. at 1164; New Jersey, id. at 1172; New York, id. at 1177; Washington, id. at 1178.)

It is also been claimed that a Federal public accommodations law would "help move this potentially dangerous problem from the streets to the courts." (H. Doc. No. 124, supra, 5.) The Assistant Attorney General in charge of the Civil Rights Division of the Department of Justice claimed that:

"In fact, if it had been on the books * * * the demonstrations would not have taken place in Birmingham. The problem in Birmingham, the problem in all of the cities where demonstrations are concerned with this kind of discrimination, is that there is no legal remedy at the moment. There was not any then.

"There was no action that the Government could take, there was really no action that individuals could take to bring about a desegregation of facilities in Birmingham.

"But there was no legal remedy. That is why the matter was in the streets, that is why this legislation is so urgently needed if this country is going to escape that kind of method of trying to resolve this matter and get rid of this injustice." (Hearings before the Senate Committee on Commerce on S. 1732, 88th Cong., 1st sess. 215 (1963).)

The Secretary of Labor declared that:

"If there is no law, the demonstrators and demonstrations will not disappear, go away, drop out of sight. They are likely instead to be more numerous and evident with the aid of a growing educated and forceful Negro leadership." (Hearings, supra, 625.)

The Under Secretary of Commerce testified before the Senate Committee on Commerce that:

"We live in a time of racial unrest, gentlemen, and this unrest is not going to dissipate without assistance. Voluntary efforts have been helpful, but they are not doing the job. I am satisfied that broadly applicable legislation such as this will solve the problem more neatly, more cleanly, and more quickly than half measures, unevenly undertaken. For that reason, I think that by and large, our businessmen, North and South, will welcome it." (Id. at 691.)

"Some 30 States, the District of Columbia, and numerous cities—covering some two-thirds of this country and well over two-thirds of its people—have already enacted laws of varying effectiveness against discrimination in places of public accommodation." (H. Doc. No. 124, 88th Cong., 1st sess. 4–5 (1963).)

These States and cities are:

States: Alaska, California, Colorado, Connecticut, 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, Wyoming.

Cities: Washington, D.C.; Wilmington, Del.; Louisville, Ky.; El Paso, Tex.; Kansas City, Mo.; St. Louis, Mo. (Id. at 4.)

Some of the State laws are considered to be more stringent than the provisions that we are now considering. (Hearings, supra, 251.)

Large scale racial demonstrations have recently occurred in the following cities:

Sacramento, Calif.; Stamford, Conn.; Chicago, Ill.; Marion, Ind.; Des Moines, Iowa; Kansas City, Kans.; St. Louis, Mo.; Beloit, Wis.; Englewood, N.J.; Philadelphia, Pa.; Buffalo, N.Y.; Detroit and Grosse Point, Mich.; Denver, Colo.; Oklahoma City, Okla.; New York, N.Y. (Hearings, supra, 206, 233.)

Some public accommodations provision was in effect in every one of these places except Oklahoma City, Okla.

The Assistant Attorney General made a distinction between the demonstrations occurring where no public accommodations law was in effect and those demonstrations occurring in cities already subject to such laws.

According to the Assistant Attorney General, "Some of the protests involved grievances other than the denial by a place of public accommodation, but in many others, discrimination in such places was a major target and for obvious reasons." (Hearings before the Senate Committee on Commerce on S. 1732, 88th Cong., 1st sess. 206 (1963).)

He classified the demonstrations into three categories: "Some of them have been directed mainly against the practice of discrimination in places of public accommodation, some of them have been in sympathy with those demonstrations and some of them have been directed against other kinds of discrimination, particularly in employment or union membership." (Id. at 233.)

But in some of those cities in which public accommodations statutes and ordinances were in effect and in which demonstrations against other forms of discrimination took place, legal remedies against these latter forms of discrimination were also available. For example: Fair employment laws were in effect in California, Colorado, Connecticut, Illinois, Kansas, Michigan, Missouri, New Jersey, New York, Pennsylvania, and Wisconsin. Laws broadly prohibiting discrimination in education were in effect in New Jersey, New York, and Pennsylvania. Fair housing laws were in effect in Colorado, Connecticut, New Jersey, New York, and Pennsylvania.

So we find ourselves confronted with the fact that demonstrations occur not only where no legal remedies against the conditions complained of have been provided but also where such legal remedies are readily available. Areas already covered by comprehensive civil rights legislation have witnessed with surprise and dismay the growing tendency of Negroes to turn away from the courts and to take to the streets in an effort to resolve political issues by force and compulsion. These areas have experienced dreadful disturbances of their domestic peace and tranquillity in the guise of nonviolent exercises of the right to assemble and to petition.

This development was commented on in the U.S. News & World Report of June 10, 1963:

"A threatened revolt in the North against continued segregation of the races suddenly is being forced into the open by Negro leaders.

"A growing number of racial incidents in northern cities gives weight to the threat. Trouble has flared in Philadelphia, Baltimore, New York, Detroit, St. Louis, Chicago, and Boston, among other places.

"Negro organizations are moving away from dependence on courts and toward direct pressures to bring about change.

"Politicians regard the whole racial situation as loaded dynamite. It is causing President Kennedy to appeal for more voluntary integration and to lay plans for seeking new civil rights laws from Congress.

"Negro leaders insist that cities in the North move in three fields.

"1. Schools: Negroes demand elimination of the school segregation that grows out of housing patterns and the flight by white families from mixed neighborhoods to all-white areas. To gain this end, Negroes are attacking the neighborhood pattern of school districting, asking assignment of pupils on a basis to promote biracial classes.

"2. Housing: Negroes demand an end to customs and practices that prevent them from moving into white neighborhoods. They describe as 'racial ghettoes' the areas in which Negroes often are crowded in Northern cities.

"3. Employment: Negroes demand that employers begin actively recruiting Negroes for jobs in order to overcome inequalities in employment opportunities." (U.S. News & World Report, June 10, 1963, p. 35.)

The phenomenon of persons "turning from courts to the streets, from argument to riot" was the subject of an editorial entitled, "The Madness of the Mob," appearing in the Wall Street Journal on June 24, 1963.

"Inflamed by their leaders, the Negro people are deserting the orderly ways society has provided for the redress of their grievances, the very ways which have brought them so much progress in the space of a decade. They are turning from courts to the streets, from arguments to riots.

"Look not merely at Birmingham. Look at New York or Pennsylvania, Illinois or California. Look at the Nation's Capital. Not only have there been riotous clashes as mobs poured into the streets, but Negro leaders have announced that if the local authorities don't do thus-and-so, and at once, they will choke the streets with bigger mobs.

"The excuse for all this, we are told, is that the Negro's very gains make further patience intolerable. Perhaps so. Yet those who persuade the Negroes that violence is the instant remedy for all ills, or encourage them to practice government by rioting, give ammunition to those who say the Negro is socially and politically immature. In this Nation both of these ideas strike at the very heart of society itself.

"So, too, do some of the remedies put forward by many political leaders, whether done from a desire of political gain or from a fear of violence.

"In New York State, where race bars no one from a public school, the State board of education says equal rights are not enough. The slightest separation of the races, from whatever cause, must be obliterated. Schoolchildren must be hauled back and forth like pawns on a chess board to achieve an arbitrary 'balance' decreed by the political authorities.

"Now this is, first of all, as brutal a charge of Negro inferiority as any from the wildest southern extremists, for it accepts the idea that the numerical presence of white children automatically raises the educational level of a school, or conversely that too many Negro pupils lowers it. Beyond that, this policy ceases to be an extension to all of the equal protection of the laws. It is the denial to all of freedom under law. A Negro family that does not want its child carried to a distant school is equal in helplessness under the power of the State.

"On the national level too, politicians talk more and more of applying the brute force of government to compel people to conduct their private lives as the state directs, hardly pausing to think how this remedy would alter a free society. If some had their way, no man would be free to choose his neighbors, his children's associates, to whom he will give lodging or to whom he will sell a hotdog.

"Few political leaders any longer dare to try to distinguish between a just and worthy cause—the assurance of equal political rights for all citizens in our society—and a headlong assault against society itself, its ways of living, and its ways of ordering the laws by which it lives.

"Not the least of the dangers in this is that, if unchecked, it will breed a reaction, as a crowd's excesses always do, and the injury will be not the least to the Negro's own cause. But make no mistake about it, it will be an injury to all if hysteria makes it

impossible for a reasonable voice to be heard, if we let the reason of men be engulfed in the madness of a mob."

New York City

New York City is a prime example of a community which, although covered by comprehensive civil rights laws, is repeatedly subjected to alarming demonstrations. The city is covered by State laws against discrimination in employment, places of public accommodation, housing, and education. "Equality of opportunity and treatment for all of its people regardless of race, creed, color, or national origin has been specifically guaranteed by [the] State government since 1945." (New York State Commission for Human Rights, "Equal Rights in New York" 2.) It should be noted that:

"For nearly 80 years New York State has been working to eliminate discrimination. The first law was passed in 1881, providing criminal penalties for excluding anyone from inns, common carriers, public schools and amusement places because of 'race, color or previous condition of servitude.'

"In 1938 the State Constitution set a nationwide precedent by declaring: 'No person shall, because of his race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person, or by any firm, corporation or institution, or by the State or any agency or subdivision of the State.'

"In 1945 New York became the first State to pass a law prohibiting discrimination in employment. In 1952 the law was amended to cover discrimination in public places, in 1955–56 to cover publicly-assisted housing, in 1958 to cover discrimination in employment on account of age, and in 1959 to cover discrimination in tax-exempt nonsectarian schools. Today the State's laws on discrimination are unsurpassed in the United States." (Id. at 3–4.)

New York City officials have been stunned at the pressures that have been brought to bear upon them. According to an article in the New York Times of July 15, 1963:

"No city government in the country has exceeded New York in efforts to be sympathetic and helpful on the problems of Negroes, Puerto Ricans and other minorities.

"In spite of this record, the Wagner administration is beset on all sides with rising demands to do even more to assure equality. These pressures, capped by many demonstrations, focus on furthering integration in the schools, opening jobs—particularly in the construction field—sharpening civil rights machinery and winning more policy-making posts in government.

"Demonstrations have been sponsored by organizations ranging from long-established groups such as the National Association for the Advancement of Colored People and the Urban League, which had become almost sedate in their march forward, to newer, brasher groups like the Congress of Racial Equality.

"The emergence of CORE, with its aggressive leadership, meant from the outset to the informed that the NAACP and the Urban League would 'either be pushed into the background or be pushed to the forefront.' Developments took the second course.

"The Wagner administration was caught by surprise. It had felt secure because its record was good and because year after year it had the overwhelming support of Negroes and Puerto Ricans at the polls.

"The feeling was that it couldn't happen here. In Birmingham, yes, but not here.

"But it did happen here, and the administration, stunned at first, is still floundering."

SIT-INS

A. Office of the State Commission on Human Rights

Demonstrators were permitted to stage a sit-in at an office of the State Commission on Human Rights in great comfort. It was reported in the New York Post of June 28, 1963, that "They're allowed to sleep in the offices of Commission Chairman George A. Fowler, they have a portable television set and a transistor radio to keep them entertained, they play chess and cards and skim through the papers to find the stories about their protest.

"All things considered, it's probably the cushiest sit-in assignment on record." (New York Post, June 28, 1963, p. 16, col. 1.)

B. Governor's Office

Other demonstrators have been permitted to stage sit-ins within both the city hall and the Governor's New York office building. The hospitality which the demonstrators enjoyed at the Governor's office was reported as follows:

"Those within the Governor's headquarters have been sitting or sleeping on leather couches in an air-conditioned room usually reserved for news conferences. They have small overnight bags with cigarettes, face cloths and toothpaste. Hanging from behind the door are dresses and other clothing.

"Mostly they talk or read, getting very little sleep. Periodically a guard peeks into the room and counts the pickets, making certain there are not more than nine, the maximum permitted.

" 'The worst part of this is the waiting," one said, 'waiting and waiting for the Governor to do what he should have done a long time ago.' " (New York Times, July 19, 1963.)

The Governor was reported to have made the following comment concerning the demonstrators who were staging the sit-in in his headquarters: "I have no objection at all. This is a free country." (New York Times, July 26, 1963.)

Subsequently, the Governor authorized the removal of seven of the demonstrators for blocking the entrance of the building. These demonstrators were subsequently convicted of trespassing in the Governor's offices. He had testified that "he had entered into an agreement with the demonstrators under which a certain number (nine) of them could occupy the press room at his office but were not to use the stairs or passageways except for entering and leaving. When he was informed that the demonstrators had broken the agreement and blocked stairs and passageways he authorized their removal from the building, which he owns and uses chiefly for the transaction of State business." (New York Times, Aug. 29, 1963, p. 1.)

The incident which had led to the arrest and removal of the seven demonstrators was described in the New York Times of August 2, 1963, as follows:

"Seven civil rights demonstrators were arrested last night for blocking the entrance to Governor Rockefeller's Manhattan office at 22 West 55th Street.

"The demonstrators, adopting a more militant tactic against the Governor, had squatted in the doorway and on the steps of the office for more than an hour until Deputy Chief Inspector Sanford Garelik ordered their arrest.

"At 7:51 p.m. a large police van backed up directly to the door. Inspector Garelik gave them a final warning. The pickets refused to go and chanted 'hallelujah.'

"Two of the squatters walked voluntarily to the police wagon. But the others, including two women, had to be carried.

"The Governor's assistant press secretary, Dan Barr, said that Governor Rockefeller, who was in Tarrytown, had been given an eyewitness account of the incident by Sol Korbin, counsel to the Governor.

"He said the Governor asked Mr. Korbin to see if the pickets would 'listen to reason' and abide by a previous agreement. Under this agreement a maximum of nine demonstrators were allowed to sit in a large rear office where the Governor often holds press conferences.

"Should the pickets remain adamant, the Governor was willing to 'leave it up to the police' whether they should be arrested, Mr. Barr said.

"The demonstrators were protesting alleged job discrimination against Negroes and Puerto Ricans in State construction projects.

"They were showing their new militancy on the day that Governor Rockefeller announced that the State had achieved the first breakthrough by Negroes into the previously all-white local 1 of the Plumbers Union in Brooklyn.

"The Governor said that, as a result of 'positive efforts' by the State, the local had agreed to accept two Negro plumbers as helpers at the Downstate Medical Center, the scene of violence in civil rights demonstrations over the last 3 weeks.

"For the first time they adopted a tactic used by other demonstrators at city hall. At 6:20 p.m., seven pickets began obstructing the entrance to the Governor's office. One sat in the doorway while others squatted on steps just inside the door.

"They were obviously inviting arrest. A police sergeant warned them to leave. They refused. The police took pictures of the squatters and stood by, awaiting orders on whether to carry out the first arrests of pickets in the Governor's office.

"The orders came within a few minutes.

"Raymond E. Gardner, 22, one of the demonstrators arrested, said the incident had been staged to protest the arrangement under which no more than nine were allowed to sit in the backroom. 'We want to be able to go in and out when we want, as many as we want,' he said.

"He had squatted right in the doorway, extending his legs across the full width of the door. From the back room where four pickets were sitting on a red leather couch, came the sound of singing.

"The seven demonstrators arrested included three Negroes and four whites; the two women were white.

"After the squatters were removed, the doors of the Governor's office were locked with the four pickets still in the back room. The police said they could let themselves out, but that no other pickets could get in." (New York Times, Aug. 2, 1963, p. 1.)

The Governor of New York ultimately banned sit-demonstrations in his office. According to an article appearing in the New York Times of October 8, 1963,

"Governor Rockefeller has banned civil rights demonstrators from his office here.

"The Governor waited until pickets of the Joint Committee on Equal Job Opportunity had voluntarily vacated the pressroom at 22 West 55th Street before announcing that sit-ins would no longer be tolerated at the building, which he owns.

"Pickets withdrew from the pressroom without fanfare September 16 after occupying it continuously since July 10. A civil rights official explained yesterday that the 68-day siege had been called off 'for strategic reasons.'

"The withdrawal of the pickets and an announcement that a threatened march on city hall had been called off by the Congress of Racial Equality gave rise to reports that local civil rights agitators were losing steam.

"So Brooklyn Negro ministers, angered by the slow acceptance of Negroes by the building trades unions, warned of new demonstrations after October 15, the end of a truce period that had been arranged by State officials.

"And Gladys Harrington, of the Congress of Racial Equality, who had been in charge of the sit-in at the Governor's office, announced that picketing of the new Federal

Building site on Foley Square would start at 7 a.m. Monday. She said the picketing would dramatize CORE's allegation that job discrimination existed on Federal construction projects as well as on those sponsored by the State and city.

"Miss Harrington said the sit-ins had been withdrawn from the Governor's office because 'we want to reevaluate our whole attack. We want to make our protests more meaningful.' She promised that Governor Rockefeller 'will be hearing from us again.'

"The Governor's decision to keep his building free of sit-ins was revealed when a visitor remarked on the absence of pickets. A secretary then released the following announcement by the Governor's press secretary, Robert L. McManus:

" 'The only demonstrators at 22 West 55th Street departed on September 16.

" 'The demonstrators have made their point, and Governor Rockefeller has been sympathetic with their objective, despite some interference with the use by the press of his New York City office.

" 'Now, however, the privilege to use the premises which was extended to the original demonstrators has been voluntarily abandoned.

" 'Demonstrators no longer will be permitted access to the building.' "

The sit-in demonstrators at city hall did not have as many comforts as those at the Governor's office building.

"There [were] no chairs, only the floor to sleep on, and where, once each night, the janitors come by with buckets and mops and the pickets just move to the other side of the hall.

"During the day they just sit on the hard floor and talk among themselves, or play a portable radio softly." (Ibid.)

But according to one of the mayor's aids, they had twice refused offers of the mayor "to get them chairs or even a special room." (New York Times, July 30, 1963.)

Subsequently some other demonstrators at the city hall tried a new tactic. They attempted to dump a truckload of rubbish into City Hall Plaza. This incident was described in the New York Times of August 22, 1963, as follows:

"The rubbish was trucked into city hall after being gathered from behind a row of rundown, rat-infested tenements in the 200 block of Eldridge Street. The sponsors of the protest, CORE's New York University chapter, said they hoped it would draw the city's attention to the conditions on Eldridge Street.

"The truck of rubbish was accompanied by about 80 chanting handclapping pickets who marched on Park Row for an hour. The pickets, some pushing babies in carriages, carried signs in English and Spanish demanding that 'Slumlords Must Go.'

"A group of CORE members who have been staging a sit-in outside Mayor Wagner's office for several weeks also joined the picket line and led the chants.

"The truck arrived at the east end of city hall plaza at 2:34 p.m., and six persons who had been riding in the rear immediately began to dump broken furniture, torn mattresses, rusted metal cabinets and other rubbish into the street.

"A sizable pile of rubbish had been thrown to the plaza before the police pushed their way into the bed of the truck and forced its six occupants to the street. A scuffle broke out when Jon K. Schaefer, later identified as a national field representative of CORE, left the picket line and tried to aid in unloading the truck.

"He was pushed to the ground by the policemen, who then tried to persuade the men to disperse.

" 'If you want to break it up and move on, fine,' Capt. Philip S. Licht of the Elizabeth Street station house told them.

" 'I can't afford an arrest,' one young man said, and disappeared into the crowd. The others, however, locked arms and began to sing.

" 'One, two, three,' Captain Licht counted, and then ordered eight men arrested. They were held in an empty transit authority bus nearby until police cars arrived to take them to the station house.

"As the eight were led away from the rented, open-top red truck, the picket line changed its chant to 'who do they protect? Slumlords, slumlords.'

"At 3:40 p.m., a department of sanitation dump truck arrived at the scene to cart away the rubbish. Picketing continued behind police barriers until 3:30 p.m. while those pickets who had come from within city hall returned to their posts on the floor there and started the 'slumlord' chant in the building.

"A large rat, said to have been caught in No. 205, was hung in a wire cage on the side of the truck.

"At first, the demonstrators said they would dump the trash in front of the municipal building in hopes of getting action from Commissioner Harold Birns of the department of buildings.

"Later in the day, Mr. Birns issued a statement, saying that cellar-to-roof inspections of the buildings on Eldridge Street had been in progress since Monday. He also said that $790 in fines had been levied against the owners of the buildings since 1960.

"Mr. Birns handed out a typewritten sheet headed 'Court Record Histories,' listing the defendants in the court cases variously as Hyman Kaplowitz, agent of the Sumak Holding Corp.; Jack Cross, Morris Weiss, Jack Silverstein, and someone identified only as 'Solomon.'

"The name of Mr. Kaplowitz, who has offices at 188 Avenue B, appeared on many of the signs carried by the demonstrators. He was not reached for comment.

"Seven of those arrested were charged with disorderly conduct. They were Joel L. Freedman, 20 years old, of 145 Waverly Place, chairman of the CORE chapter; Jeffery S. Kalb, 20, of 195–10 67th Avenue, New Gardens, Queens; Stephen W. Gordon, 22, of 60 Knolls Crescent, the Bronx; Alexander Boyer, 19, of 32 Avenue B; Mr. Schaefer, 26, of 322 Linden Boulevard, Brooklyn; Eleuterio R. Gonzalez, 28, of 209 Eldridge Street, and Antonio Vasquez, 32, of 215 Eldridge Street.

"Mr. Freedman, Mr. Kalb, and Mr. Gonzalez were also charged with littering.

"The driver of the truck, George Cannon, 47, of 40 Macdougal Street, was charged with littering and acting in concert. He was also charged with letting rubbish fall from the truck and for transporting garbage without a license. The summonses are returnable in lower Manhattan Court August 27.

"In Night Court, Judge Benjamin Gassman released all except Mr. Vasquez and Mr. Gonzales, for whom he set bail at $25 each. He set September 26 for a hearing."

The mayor's patience with the civil rights demonstrators in the city hall came to an abrupt end on the next day. He ordered the pickets removed from the city hall and issued the following statement:

"At 5 p.m. today, after receiving an official report from Police Commissioner Murphy as well as eye-witness accounts from members of my staff with regard to the incidents that took place within city hall and on the steps of city hall today, I directed Police Commissioner Murphy to bring about the immediate removal of the sit-ins from city hall itself, and the enforcement for them as well as for all others, the usual limitations restricting pickets to the walkways on the outside perimeter of city hall square.

"Since July 9 I have permitted the zealous youths who comprised picketing forces of the joint committee to conduct their sit-in without hindrance, not because they had the legal right to do so—because they did not—but because of my deep sympathy for their objectives.

"I assumed that they were sitting in because they wanted to focus public attention on the basic problem of civil rights. They have certainly made their point. The cause of the rectification of injustice must always be allowed some license.

"In the past, from time to time, there has been intermittent interference by the pickets with the conduct of public business, but for the most part, up until very recent days, the inconvenience for the city was minimal.

"Within the last several days, however, overzealous conduct has turned into outright provocation on a consistent basis. Regular and prolonged outbursts of shouting, chanting and littering were aimed at getting regular press attention. The interference with the function of the mayor's office, the board of estimate and even the city council had, in any event, reached intolerable limits. Today's incident marked a climax. It was also an outbreak of violence, in which three policemen were injured. A repetition must be prevented for the sake of all concerned.

"The entire course of recent actions represents an unjustifiable interference with the orderly operations of government at its very seat and center and places in jeopardy the safety of the public.

"This interference has, of course, extended also to those very efforts and activities of the city government designed to make progress toward the solution of the very problems with which these pickets are supposed to be concerned.

"Under the circumstances, with the city's government under an increasing state of siege and with the pickets abandoning all sense of restraint and propriety or respect for the rights of others, I took the action referred to above.

"This represents no change whatever in the policy of my administration on civil rights or with regard to any other picketing or similar activity in behalf of civil rights other than picketing within City Hall." (New York Times, Aug. 23, 1963, p. 11, cols. 2 and 3.)

The events which led to the ouster of these pickets from City Hall were recounted by the New York Times of August 23, 1963, as follows:

"Mayor Wagner's patience with civil rights pickets sitting outside his office came to an abrupt end yesterday. He ordered them removed from City Hall after a noisy racial melee in which three patrolmen were injured.

"The action ended 44 days of the mayor's acceptance of sit-in pickets who had squatted outside his office day and night, chanting, singing, littering, and hurling abuse.

"Mr. Wagner said he had been forced to act after 2 days of 'outright provocation.' The incident that broke his patience began soon after he and other city officials left the building at 1:20 o'clock yesterday afternoon.

"A dozen pickets ran up City Hall steps and tried to chain themselves to a pillar at the entrance, but policemen intervened before they could complete the tactic. While both sides wrestled among clanking chains, other demonstrators left a picket line on Park Row and tried to storm the building. They fell on police with fists and knees.

" 'Wagner, stay home,' some of the pickets screamed in reference to the mayor's announcement 2 days ago that he would participate in the march on Washington next Wednesday. The pickets declared he should stay in New York and find jobs for Negroes and Puerto Ricans in the building trades instead of taking part in the march.

"Plainclothesmen and uniformed patrolmen gradually forced the pickets down City Hall steps and back into Park Row. There some of them sat in the street, blocking traffic. They were dispersed by mounted police.

"None of the demonstrators were arrested. One, a bearded Negro, was carried by six policemen through City Hall and out the back door to a police wagon. He kept squirming and shouting: 'Police brutality must go.'

"Val Coleman, a staff member of the national office of the Congress of Racial Equality, which sponsored the demonstration, accused the police of 'very brutal action.' He said policemen 'punched and kicked several people' and threw one demonstrator down the steps. None of those acts was witnessed by others at City Hall.

"Mr. Coleman was arrested later when he returned to City Hall and refused to leave after the sit-in pickets had peacefully departed on orders of the police. He carried a blanket under his arm and told the police he wanted to sit-in despite the mayor's order.

"During the fighting on the steps, Patrolman Lowell Levine was kicked in the legs by pickets. He also suffered cuts when the pickets' chain bit into his left arm. Two other policemen, De Mar Trochelman and Edward G. Wilson, suffered strained backs in carrying squirming pickets to a police wagon.

"When the mayor returned to the building and heard what had happened he was fed up. He summoned Police Commissioner Michael J. Murphy and directed him to remove the pickets from City Hall.

"Mr. Wagner said he had let them stay so long (the picketing began July 9) because of his 'deep sympathy' for their objectives.

"The pickets had been protesting alleged employment discrimination against Negroes and Puerto Ricans in the building trades unions. Some unions do not have any Negroes among their several thousand members.

"The mayor said he thought the pickets were sitting in 'because they wanted to focus public attention on the basic problem of civil rights.'

" 'They have made their point,' he declared.

"The pickets had cluttered the Colonial hallway and had caused distractions for the mayor's staff by chanting denunciations of their leader. A few weeks ago several pickets were arrested for trying to block access to the mayor's office.

"Yet the mayor said yesterday that 'up until very recent days the inconvenience for the city was minimal.'

"On Wednesday the mayor began to lose patience. That day, eight members of the Congress of Racial Equality tried to dump a truckload of rubbish into City Hall Plaza. They brought a truckload of trash, including one large dead rat, from vermin-infested tenements and were unloading it on the plaza when police arrested them.

"The truck was accompanied by 80 chanting, handclapping pickets who bore signs in English and Spanish demanding that 'Slumlords Must Go.'

"Yesterday the mayor saw another 'outright provocation.' When he entered his office a dozen sit-in demonstrators greeted him with cries of 'Stay Home.' One demonstrator shouted: 'Will he dare leave the city in 6 days without cleaning up the mess here?'

"At noon more than 100 pickets were outside, chanting denunciations of 'mealy-mouthed politicians' and 'lilywhite unions.'

"The mayor had attempted to appease the civil rights demonstrators by opening 20 registration offices for Negroes and Puerto Ricans who felt they were qualified for construction jobs but could not get into the unions because of 'discrimination.' " (New York Times, Aug. 23, 1963, p. 1.)

The incident was also the subject of an editorial in the New York Times the next day. The editorial offered this comment on the sit-in at City Hall:

"Yesterday, for the first time in 45 days, citizens and officials of the city of New York could enter their seat of government without having to run a gantlet of jeering, lounging, generally unkempt young civil rights pickets. As Mayor Wagner said in ordering the police to remove them, they had long since 'made their point.'

"Citizens of this city have had—and, we hope, always will have—the right to assemble peaceably and petition for a redress of grievances. The mayor's own belief in the sanctity of this principle, especially when applied to the demolition of racial barriers, has been made manifest by his decision to take part in next week's civil rights march on Washington. But the sit-in at City Hall went beyond the limits of either peaceable assembly or good sense. It was as reprehensible as the effort made by the same group Wednesday to dump rubbish in City Hall Plaza.

"The mayor was correct—even if somewhat late—in deciding that the sit-in outside his office had become an 'unjustifiable interference with the orderly operations of government' and thus could no longer be tolerated. There are other ways, and certainly better ways, for members of civil rights groups to call attention to the inequalities that still haunt the Negro in his work and in his living in this city." (New York Times, Aug. 24, 1963.)

Demonstrations at construction sites

Demonstrations at construction sites in New York City have resulted in serious breaches of the peace. The following events were reported in the New York Times of July 23, 1963:

"More than 200 civil rights demonstrators were arrested in Brooklyn yesterday and 26 others were taken into custody in Manhattan as a result of efforts to block public construction until Negroes and Puerto Ricans get more jobs.

"Police officials said they believed the mass arrests here were the highest since 500 persons were jailed in the Harlem riot of August 1, 1943, when 5 persons were killed.

"At least 10 ministers and church officials were detained in the Brooklyn demonstrations outside the Downstate Medical Center. In wave after wave for nearly 8 hours, Negro and white sympathizers darted in front of incoming construction vehicles to sit down or lie down in the roadway. They were picked up and taken away in patrol wagons—a dozen at a time.

"In Manhattan, six ministers were arrested for locking their arms to obstruct construction vehicles trying to enter the Rutgers Houses projects on the Lower East Side. There the demonstrations led to scuffling between other pickets and policemen trying to move them. The demonstrations were over within a quarter hour.

"Edward S. Lewis, executive director of the Urban League of Greater New York, whose organization has been among the sponsors of the demonstrations, said last night that 'there is going to be no let-up in the kinds of pressure now going on until something is done.'

"He said civil rights leaders had told both Mayor Wagner and Governor Rockefeller that 'the one way to solve this is some brown faces—Negroes and Puerto Ricans—on construction jobs.'

"The Reverend Dr. Gardner C. Taylor, spokesman for the Brooklyn demonstrators, said last night that his group had received an indication that Mayor Wagner would be willing to meet with it last week to give priority to complaints of discrimination in the construction industry.

"A commission spokesman said yesterday that the agency for some months had been sending out questionnaires to contractors to appraise compliance with antidiscrimination clauses in their contracts.

"The State commission for human rights announced yesterday that it would hold a public hearing on an Albany union, local 12 of the International Association of Bridge, Structural & Ornamental Iron Workers, but no date was set. An investigation into a complaint that Negroes were denied membership in the union was said to have shown there were none among 500 members.

"The Rochdale Village housing project in Jamaica, Queens, which is described as the world's largest cooperative, was announced as the target for demonstrations beginning today, in a move to get 25 percent of the construction jobs for Negroes and Puerto Ricans.

"The construction demonstrations also spread yesterday to a public school project in West Brighton, Staten Island.

"The police department reported that 211 adults had been arrested in the Brooklyn demonstrations, including 130 men and 81 women. The names of 12 children—6 boys and 6 girls—were recorded by the police but this did not constitute arrests.

"All the Brooklyn defendants were charged with disorderly conduct. A total of 192 were arraigned, and all were released on their own recognizance, pending varying hearings. Of the arraignment, 126 were in adolescent court before Judge Abraham Roth, and 66 before Judge John M. Murtagh in criminal court.

"Another clergyman, the Reverend G. D. Younger, issued a statement on behalf of the Lower East Side ministers. It said in part:

" 'The sidewalk in front of a construction site is not our usual pulpit, and sitting in front of trucks is not our customary form of preaching. We have been led to this action as a result of the failure of responsible authorities in our city to act on a vital phase of the moral crisis in which we are all currently involved.'

"The statement went on to criticize Mayor Wagner and Governor Rockefeller for refusing to halt public construction or bringing charges against craft unions involved in discrimination.

" 'After serious consideration,' the statement added, 'we choose to violate the law to reveal the lengths to which the city will go to avoid having to enforce the fair employment provisions of existing laws.'

"The ministers, a seminary student and social worker, were charged only with disorderly conduct, but 17 other defendants in the Rutgers Houses picketing were charged further with interfering with police officers.

"Yesterday's Brooklyn demonstrations were organized by the Committee on Job Opportunities for Brooklyn, formed by 75 Negro ministers last week with the Reverend Dr. Sandy F. Ray as chairman. Other officers include the Reverend Walter G. Jacobs, cochairman; the Reverend H. Carl McCall, secretary; the Reverend Richard Saunders, financial director, and the Reverend W. A. Jones, coordinator.

"The Brooklyn group held a meeting last night at the Corner Stone Baptist Church, 574 Madison Street, Brooklyn, to determine further policy. Dr. Taylor said its aim was to obtain 'at least 25 percent of jobs in all categories' for Negroes and Puerto Ricans in projects built by public funds.

"New picketing, led by five clergymen, started yesterday at the construction site of Public School 25, West Brighton, with 15 marchers. Richard Prideaux, chairman of the Staten Island chapter of the Congress of Racial Equality, said that the plan had been to picket Curtis High School, New Brighton, where an addition is under construction, but that not enough pickets appeared."

These events were also the subject of an editorial in that issue of the Times. The editorial was entitled "Right Goal; Wrong Method."

"Demonstrators, of course, have the right to call attention to the obviously discriminatory apprenticeship and job requirements of certain unions, such as those in the building trades in New York.

"But there are right and wrong ways to achieve the goal of equal employment opportunity. When demonstrators picket peacefully, they exercise the fundamental right of petition. But they are transgressing that right when they block access and physically interfere with the passage of others. This is particularly true when public buildings are involved, and where governmental business is transacted.

"The pickets who lay down yesterday in front of the construction sites of the Downstate Medical Center in Brooklyn and the Rutgers housing project in Lower Manhattan went beyond acceptable bounds of nonviolent protest and incidentally blocked progress on two important public works. They were asking to be arrested; they should have been arrested; they were arrested.

"The demonstrators are also following a truly vicious principle in playing the 'numbers game.' A demand that 25 percent (or any other percentage) of jobs be given to Negroes (or any other group) is wrong for one basic reason: it calls for a 'quota system,' which is in itself discriminatory. A 'quota system' disregards qualifications, at best leads only to token jobs and is obviously discrimination in reverse. This newspaper has long fought a religious quota in respect to judgeships; we equally oppose a racial quota in respect to jobs from the most elevated to the most menial."

Another editorial critical of the conduct of the demonstrators was published in the New York Times of July 31, 1963. This one was entitled, "Breakthrough or Breakdown?"

"In the name of good sense and better race relations, what in the world do the leaders of the integration movement in this city hope to gain by the tactics they now are using to attract public attention?

"Item: Eighteen Negro children aged 2 to 13 years being placed by their elders at the entrance to the site of the Downstate Medical Center in Brooklyn;

"Item: Seven older demonstrators jumping on a construction truck at the same location and entwining themselves around a portable crane so tenaciously that 20 policemen were required to pry them loose;

"Item: A white couple and a Negro man blocking access to Mayor Wagner's office in City Hall;

"Item: Others maintaining an around-the-clock sit-in at Governor Rockefeller's New York City office on West 55th Street.

"It can be doubted that these and similar unlawful sit-ins, lie-ins, stand-ins that have been carried out in recent weeks in New York City have advanced the cause of equality under the law by an iota, or speeded up action to bring about a redress of just grievances. They may very well have had the adverse effect of alienating some old friends. They can hardly have won many new ones.

"There comes a time in any campaign when the law of diminishing returns begins to operate. That time seems to have come, and to have been passed.

"A recent statement by the public affairs committee of Freedom House is commended to the campaign leaders for careful reading. The members of that committee hardly can be accused of being hesitant whites or Negro Uncle Toms. The statement points out that it is at the conference table where settlements must be reached in a democratic society, not in the streets. That is where they must be reached if breakthrough is not to become breakdown."

And on the same day that that editorial appeared, a riot was narrowly averted at the site of the Downstate Medical Center in Brooklyn. This incident was reported in the New York Times of August 1, 1963, as follows:

"A riot was narrowly averted in Brooklyn yesterday as civil rights demonstrators continued to press for more jobs for Negroes and Puerto Ricans in the construction industry.

"Police reinforcements subdued a shouting, surging crowd of about 100 pickets at the construction site of the Downstate Medical Center in Brooklyn.

"For a few moments the crowd struck and kicked at policemen who were carrying away pickets from the path of construction trucks. The brief flareup threatened to ignite the ugliest incident of the city's racial crisis.

"Mounted policemen helped press back the Negro and white demonstrators. Using their nightsticks as rams, the police pushed the mob from the roadway at Clarkson Avenue.

"A patrolman and a policewoman were injured by kicks. Two Negro women suffered injuries in the milling, taunting throng.

"Just as the outbreak threatened to explode into open rioting, a Negro clergyman, the Reverend William A. Jones, Jr., leaped on a stack of lumber and shouted to the crowd to disperse. He accused the police of misconduct and cried:

" 'This proves there's no difference between New York and Alabama, no difference between the United States and South Africa. This Nation is going straight to hell.'

"He ordered a halt in picketing and said that further measures would be discussed later in the day at a rally in the Berean Baptist Church, 1641 Bergen Street, Brooklyn.

"Twenty-two persons were arrested at the hospital project, including seven clerygmen.

"The day's most disturbing development was the growing restlessness of the Brooklyn demonstrators. The Reverend Edward Ducree, one of the Negro leaders at the Downstate Medical Center site, told reporters: 'Our people are getting restless; we are not getting results.'

"Later he led a prayer in the middle of the street, and traffic was halted for 10 minutes as the pickets knelt on the pavement.

"Trouble started soon after 8 a.m. when 12 persons, including 6 clergymen, tried to block the movement of trucks by sitting in the roadway. The police carried the clergymen into a patrol wagon when they refused to move.

'They were the Reverend Letty M. Russell, a Presbyterian; the Reverend Dr. Fred Dennard, a Baptist; and the Reverend Esdras Rodriguez, a Methodist; all of the Church of the Ascension, 340 East 106th Street in Manhattan; the Reverend Lynn Hageman, the Reverend Charles Farrell, and the Reverend George Webber. Dr. Dennard is a Negro and Mr. Rodriguez a Puerto Rican.

"Pickets taunted the police, calling them 'stormtroopers,' and the outcry grew when a woman, Mrs. Barbara Coston, was seized after she had sat down in the street with her 3-year-old son and 7-year-old daughter. Mrs. Coston said she was demonstrating because the day before at Coney Island someone had called her son a 'nigger.' She was taken away with her children in an unmarked police car.

"Then some teenagers started a new technique of harassing the trucks. A group would lock hands and stand in the path of a truck. No sooner would they be dispersed, when another line would form 10 feet behind. Dispersal of this and succeeding lines would force the trucks to halt several times.

"The worst flareup came at 1:15 p.m. when the police formed a double line to open a path for the trucks. This maneuver enraged the crowd. Demonstrators swarmed into the street and resisted efforts of the police to drive them back onto the sidewalks.

"Motorcycle Patrolman Kenneth C. Truschke was kicked in the groin. He was treated at Kings County Hospital and later returned to duty. Earlier Patrolwoman Priscilla Wolf had been kicked in the chest while removing a woman who had squatted under a truck.

"Two Negro girls were sent to Kings County Hospital. They were Betty Gill, 17, of 522 Vanderbilt Avenue, Brooklyn, who returned to the picket line after treatment for a twisted knee and the reopening of a previous leg cut, and Gwendlyne McIver, 16, of 64 South Elliott Place, Brooklyn, who was held at the hospital for observation because she has a history of heart ailments. She had collapsed in the melee.

"At the height of the scuffling, Mr. Jones, from the top of the lumber pile, was shouting:

" 'Let's stop the pushing and shoving. We are victims of a vicious system. The police force is more concerned about protecting the right of these trucks to enter this site than they are in protecting our right to protest.

" 'They have the guns. They have the bullets. They have the helmets. They have all the instruments of warfare. But our protests will be heard around the world tonight.'

"He told the pickets to go home and promised that sound trucks would be sent through the Negro communities urging massive attendance at a night rally to discuss future strategy.

" 'Police brutality must go,' shouted the pickets. But observers said they saw no swinging of nightsticks by the police.

"Dr. Taylor, chief spokesman for the Brooklyn demonstrators, and a former board of education member, told newsmen from the sidelines:

" 'There seems to have been a tightening of police procedures. Police are the tools of segregation in this city.'

"Later he sent a message to Governor Rockefeller and Mayor Wagner:

" 'Violence has occurred at Downstate Medical Center. People can no longer be restrained. Police apparently cannot be controlled. Public safety is threatened. Several people have been assaulted.

" 'If this continues, Federal public aid will have to be sought, as in other parts of the country. Strongly suggest closing Downstate Medical Building until elimination of violence. Picketing has been called off today in fear of further violence.'

"But the civil rights leaders seemed to be losing control over the demonstrators. Shortly after the pickets had dispersed at the urging of Mr. Jones, another group appeared at the scene and resumed picketing.

"At the rally of 900 persons last night at the Berean Baptist Church, 1641 Bergen Street, Brooklyn, the Reverend W. J. Hall, pastor of the Bethel Baptist Church, said:

" 'We are not going to apologize for breaking the law any longer. We will sit down, lay down, and stay down until the walls fall.'

"At city hall the three arrested included Nicasio Martinez whose leather-lunged cheerleading of a small group of demonstrators outside the mayor's office would have made work impossible.

"A slim, bearded Negro, 25 years old, of 63 East 177th Street, the Bronx, Mr. Martinez led the chant:

" 'Is this the U.S.A.?'

"PICKETS. 'Yes.'

" 'Is this the land of freedom?'

"PICKETS. 'No.'

" 'Is this the land of justice?'

'PICKETS. 'No.'

" 'Is this the land of equality?'

"PICKETS. 'No.'

"Mr. Martinez and the two others were arraigned before Court Judge William E. Ringel and paroled for trial Friday on charges of disorderly conduct and resisting arrest.

"In Queens, the 11 arrested included a Baptist minister, the Reverend Timothy P. Mitchell, of Ebenezer Church, 36-06 Prince Street, Flushing, who was seized while leading a prayer.

"Meanwhile, 23 Negro plasterers who had walked off the job Tuesday at Rochdale Village in sympathy for the demonstrators returned to work today."

The demonstrations were also the subject of an editorial in the New York Herald-Trib-

une of August 9, 1963. It was entitled, "Here We Go Again."

"As this newspaper said 2 days ago, demonstrations are foolish and cannot substitute for sensible good will at the bargaining table.

"Everything about the city's racial demonstrations has been wrong. Now things are even worse.

"It was bad enough when construction union leaders showed bad faith by not showing up at a meeting to discuss civil rights.

"Then Governor Rockefeller worked out a five-point program and an end to the picketing was promised.

"Now, it turns out, Rockefeller wasn't talking to the right people. And the demonstrators have gone back to making expensive nuisances of themselves.

"Apparently Rockefeller shouldn't have talked to ministers, he should have talked to the people who know how to organize.

"Just how ridiculous can things get? At a time when there has been a lull in racial protests, in the quiet before the march on Washington, the confusion and chaos that swirl around the Downstate Medical Center and other places stand out as nothing more than irresponsible larks.

"The demonstration leaders said they were fed up with 'public relations devices being put forth as a substitute for meaningful action.'

"And the public is fed up with meaningless action put forth as public pressure devices.

"There can be no solace in the streets, only greater grief."

FAILURE OF CIVIL RIGHTS LAWS TO PRESERVE DOMESTIC PEACE

The previously reported incidents are a clear reflection of the situation in places where comprehensive civil rights laws are already in effect and are being enforced. The availability of legal remedies pursuant to actively enforced civil rights laws has not solved the problem of racial unrest anywhere in the United States. There has been nothing "neat" or "clean" about the ugly incidents that have flared up in total disregard of these laws. The plain truth is that the enactment and the enforcement of a Federal public accommodations law will not result in any reversal of the current trend of Negroes "turning from courts to the streets, from arguments to riots."

PROPERTY RIGHTS VERSUS HUMAN RIGHTS

Proponents of the proposed public accommodations law claim that the right to nondiscriminatory access to business establishments is a human right superior to the property rights of the owners of these establishments. (Hearings, supra 690, 751, 755.) This is a shabby argument which distorts both the nature of property rights and the relation of those rights to other so-called civil rights. An examination of this argument will readily reveal its fallacy and the dread consequences of its application. The delusive nature of this proposition is revealed in the following commentary:

"An illuminating example of how demogogic word twisters try to deceive the people into surrendering their rights is found in their beguiling declaration: 'Human rights are above property rights.' Now, the fact is that property rights are human rights. A property right is the human right to acquire, possess, and use property. Property is one of the realities of freedom and is so classified by the Founding Fathers. Ownership of property has been historically identified with freedom. Property ownership was the distinction between the freeman and the serf. Man not only gained his political freedom but also his economic freedom by the use of property. Although this conception originally applied to real property only, it is now understood to embrace the more diversified types of property which have become of equal or greater utility as a result of changed economic conditions.

"All economic enterprise is now just as much property as land. It equally produces the means to self-sustenance, to independence. Deprive man of the fruits of property and he becomes dependent. If the State alone possesses all property, or completely controls its use, then man becomes a ward of the State. Control over the use of property may be so far reaching as to render title to property a mere fiction: An empty right. Legal ownership may not always be effective ownership. Therefore, the measure of control which the State exercises over the use of property is the determining factor as to whether or not alleged control is not in effect confiscation." (Desvernine, "Democratic Despotism," 21–22 (1936).)

Nature of property rights

The nature of property rights was discussed by Senator James Harlan of Iowa during the debate on the Senate joint resolution proposing the 13th amendment during the 1st session of the 38th Congress. Senator Harlan spoke strongly in favor of the proposal to abolish slavery. At the beginning of his remarks he had commented as follows:

"It is suggested from some quarters, and has been suggested in discussion here on the floor of the Senate, that any provision of a constitution which would interfere with the rights of individual members of the community to private property should be rejected; that the right to property does not originate in the Constitution or laws, that it existed preceding the organization of society, and that the great object of the organization of society must have been to protect, among other things, the right of the individual to his private possessions. And I accede to the truth of this allegation. I have attempted to enforce it on the floor of the Senate when other questions were being discussed. I do not believe that it would be good policy for the people of any State or any nation to incorporate a provision in their fundamental law that would abrogate the private rights of individuals. Concede their power to do so, I think the policy would be wrong. Hence I proceed to inquire into the nature of the title to the kind of property which would be affected by the adoption of the amendment proposed in the joint resolution—the foundation on which the claim to property in the service of others as slaves is based; and in doing so it will not be amiss, I trust, to state that it is conceded, I think, by the writers on elementary law that property was originally the gift of God; that the title of the individual to property originates in the labor and skill and toil which he used in reducing it to possession and enhancing its value after it may have been rightfully acquired; that each member of society has the right to go to the common storehouse of ocean and field or forest, and draw from the common supplies; that all may enjoy this right alike, but when any individual of society shall, by the application of labor and skill, acquire the possession of any of the products of the sea, fields, forest, or of the air, so much as has thus been rightfully reduced to possession becomes his personal private property. It is also conceded, I think, by all that the increased value of those possessions growing out of labor and skill on the part of the possessor belongs to the person who has applied the labor. To assert the reverse would be equivalent to denying the title of the Almighty to the workmanship of his hands; for what better right can there be to property than the right of the creator to the thing which he has made? If the individual, then, has by his labor or skill created an additional value to the thing rightfully possessed, his title ought to be considered absolute." (Congressional Globe, 38th Cong., 1st sess. 1437 (Apr. 6, 1864).)

Near the end of his remarks, Senator Harlan reviewed his reasons for abolishing the institution of slavery and set forth his conclusions that "slavery as it exists in this country cannot be justified by human reason, has no foundation at common law, and is not supported by the positive municipal laws of the States, nor by the divine law, and that none of its incidents are desirable, and that its abolition would injure no one, and will do no wrong." (Id. at 1440.)

But nowhere in the course of his remarks was there any implication that the adoption of the 13th amendment was intended to create any "human" or "civil" right superior to private rights in nonhuman property.

Relationship of property rights to civil rights

The relation of "property rights" to so-called "civil rights" was more thoroughly examined in a recent treatise entitled, "In Defense of Property," by Prof. Cottfried Dietze of the Political Science Department of Johns Hopkins University in Baltimore, Md.

The author's major thesis was that "the institution of private property is basic to our culture and constitutes an important part of freedom; that recent infringements upon property rights, irrespective of how minor they may have been in the beginning, increased by leaps and bounds with the growth of egalitarian democracy; that just as previously social and socialist regulations of property, undertaken in democratic societies, contributed to the rise of national socialism, so in the present world in which fascism has become discredited, they are likely to end up—evolutionary as the process may be—in communism. It is also asserted that the protection of private property is a prerequisite for what Jefferson called 'natural aristocracy' and the restrictions of free property are paramount to the elimination of the cream of the human race on both the national and international levels. A lot has been said, during the past years, against persecution on grounds of race. Regrettable as such persecution is, it is felt that the persecution of those who own property, which is the essence of social legislation, is just as bad." (Dietze, "In Defense of Property," 7 (Henry Regnery Co. 1963).)

Status of property rights as enunciated in historic documents

The author's examination of the relationship between property rights and "civil rights" include a review of the status accorded property rights in the great documents of the English, French and the American Revolutions. (Id. at 57–64.)

He found that, "The great documents of the democratic revolutions be they written in the 17th or 18th century, in England, America or France, consider property rights as being definitely equal to such other liberal rights as freedom of speech, the press and assembly. This fact is not surprising. By assigning property rights a position which is not inferior to that held by other rights, the democratic revolutions merely recognized what was obvious and had been hallowed throughout the ages; namely, that property was a natural right, a prerequisite of life and freedom. This attitude reflects approval not only of natural law, but also of custom. For although the overthrow of the ancient regime meant rejection of many traditional institutions, nevertheless the institution of private property survived. It proved to be too natural and too essential to life and freedom to be rejected. It was considered as being too intrinsic to civilization—and thus too civil—to be discarded. Furthermore, since the democratic revolutions instituted democracy merely as a means for the protection of freedom, their ideologists did not maintain that the fact that some rights are more relevant to democracy than others implies that the former are more valuable than the latter.

"Accordingly, the very events which led to modern democracy support our assertion that property rights are as important a part of freedom as are other liberal rights, not to mention their superiority over democratic rights. Therefore, the distinction between property rights and so-called 'civil' rights and the assertion that the latter are entitled to greater protection because they are more necessary for the working of democracy, are unwarranted not only because they misconceive the nature of freedom, disregard the nature of man, and do not take into account the experience of ages, but also because they were rejected by the very people that are usually quoted in their support; namely, by the founders of modern democracy." (Id. at 63–64.)

Rise of the institution of property

The author then discussed the rise of the institution of property during the 19th century. (Id. at 65–92.)

He observed that: "In the 19th century, private property enjoyed greater protection than ever before. The natural rights philosophy, having brought the appreciation of property to a climax in the previous century, was complemented by the historical school even though the latter was conceived as a reaction against Naturrecht. That school, founded by the civilist Savigny, largely believed in a law that was known for its individualism and for its protection of private property, namely, the Roman law. Considering that the schools of idealism and laissez faire, as well as clerical thought, also favored private property as an inherent part of freedom, one probably is justified in maintaining that the century of liberalism was a century of free property." (Id. at 92.)

Decline of the institution of property

After reviewing the rise of property in the 19th century, the author traced the decline of the institution during the course of this century. (Id. at 93–128.)

In the introduction to his section he stated that: "The 20th century, undergoing unforeseen scientific and technical advancements, witnessed, in spite of a broadening of suffrage, a decline of freedom. The 19th century brought a qualitative and quantitative improvement of constitutional government. The 20th century, with the arrival of communism, fascism, socialism and the welfare state, experienced a decline of constitutionalism. In spite of the collectivism which some saw in the doctrines of Rousseau, the idealists, and the romantics, the 19th century was a century of individualism. By contrast, the 20th became one of the masses. In the 19th century, freedom was the rule and infringements upon liberty, the exception. In the 20th, although lipservice is still paid to the inviolability of freedom, regulations of the individual's rights are so numerous that they seem to have become the rule, and freedom, the exception.

"This is especially true of private property. The protection it enjoyed has waned. The increase of its protection during the 19th century, an increase that, no matter what forms it may have taken in the various countries and how far it may have gone, was so great that one could speak of the century of free property, was followed by a sharp decline. The former intensity of appreciation now was matched by one of disparagement. The exceptional qualifications of free property that had been permitted in the 19th century, increased until there were so many of them that restriction of property became the rule, and free property, the exception. Of all the liberties of the individual, that of property fared the worst. Its individualistic conception was replaced by a social one to a greater and greater extent. Not only was static property attached, but, also the free use of property was restricted. To make things complete, even the freedom to acquire property was curtailed. Property gained in the past, property existing at present, property to be acquired in the future—every kind of property was questioned.

"This development became increasingly absurd. Originally, restrictions upon private property were justified on grounds of 'social justice.' Debatable as such a justification is in view of the vagueness of that term and the fact that people possessed equal rights to acquire and use property, restrictions were defended if they facilitated the acquisition of property by those who were underprivileged or handicapped. However, soon afterwards restrictions were made not for the sake of creating greater opportunities but for that of giving property to those who did not take advantage of opportunities. Property, one of man's great incentives throughout history, became restricted for the sake of laziness. Restrictions for the sake of 'social justice' degenerated, inevitably, it seems, into restrictions for the sake of the welfare state and socialism.

"The curtailment of property did not occur suddenly. While private property was on its victorious march, there were forces at work that questioned its institution. In time, these forces gained the upper hand. Once concessions had been made to them, they could not be halted. They are present in various schools of thought and are reflected in that mirror of thought—the law." (Id. at 93–95.)

In concluding his review of the decline of property in the 20th century, the author declared that—

"The advocacy of free property in the 19th century was honest and straightforward. Nothing was hidden in the fight for the emancipation of property from the last fetters of the ancient régime. Nothing had to be hidden, since that emancipation was an essential part of freedom, and freedom then occupied first rank. By contrast, attacks on property were, for the most part, less straightforward. Probably the most honest attack came from Karl Marx. He was clear and uncompromising. But all those 'defenders' of private property who deviated from an uncomprising defense of the liberal concept of property in order to check socialism were, looking at it from an objective point of view, dishonest. It should not be understood that the sincerity of the social gospel movement, the social-minded economists and jurists is doubted. Holmes and Brandeis, Jhering and Gierke, Duguit—they all were perhaps as much friends of property as they were of liberty. There is no reason not to give them the benefit of the doubt. On the other hand, in consideration of the increasing depreciation of private property that took place in the wake of their ideas, it cannot be denied that they sowed a seed for the decline of property.

"It is significant that the reevaluation of property began by a mere interpretation of existing law, a law that deals with the relations among individuals. Mere reinterpretation of the concept of property, especially if confined to the sphere of private law, was not likely to arouse suspicion. In private law, where individual is pitted against individual, the restriction of one individual's property is likely to benefit the rights of another individual. That was accepted. The prohibition of malicious use of property, of a use that was detrimental to the neighbor, are a few examples of a seemingly harmless social interpretation of property rights. But once the liberal or individualistic concept of property has been questioned, then it was only a small step to restrict individual property for the sake of the community. The social interpretation of private property, originally kept within the realm of private law, intruded into the field of public law. The individual was no longer confronted with the rights of fellow individuals, who were his equals, but with the demands of society. His property was subjected not only to social interpretation, but also to social legislation." (Id. at 125–126.)

ROLE OF THE SUPREME COURT IN CURTAILMENT OF PROPERTY RIGHTS

The role of the Supreme Court in this curtailment of property rights was described as follows:

"Today, it may be said that the Constitution is no longer a constitution of property. The Supreme Court, having become a tool of the social and socialist passions of the day, has deprived the Constitution of that character. Due to political pressures resulting from the great depression, the Court has interpreted the Constitution in a social manner and transformed it into an instrument for the fulfillment of a social need rather than for the protection of the freedom of the individual and of private property." (Id. at 125.)

Rights inherent in freedom

The author observed that—

"Trends have recently appeared to distinguish between the components of freedom, i.e., between property rights and so-called civil rights, and to emphasize that the latter are more of a prerequisite for democracy than the former. Since democracy is often identified with freedom, it is also asserted that civil rights are more important to freedom than property rights. In view of this development, it is imperative to examine whether these trends are sound." (Id. at 40.)

He defined freedom to be comprised of two major categories of rights; namely, the liberal rights to be free from coercion and the democratic rights to participate in government. (Id. at 41.) Liberal rights were construed to include civil rights and property rights were then examined in this context:

"The relation between democratic and liberal rights is sufficiently clear to preclude doubts about the superiority of the latter. However, a problem arises because of recent tendencies to discriminate among liberal rights themselves. A distinction has been made during the past decades between property and noneconomic rights, including such rights as freedom of speech, of assembly, and association, which are referred to as civil rights.

"This term already reveals the arbitrariness of the distinction. If noneconomical rights are civil and are distinguished from property rights, then the latter, by definition, can't be civil. They might even be anticivil or acivil. They must be incompatible with civilization. But this is simply not the case. As was shown, each liberal right is essential to freedom. Liberal rights are so essential that all of them have to maintain a minimum standard. Consequently, none of them can be uncivil or acivil, since in those cases they would be incompatible with freedom, the very landmark of civilization. Therefore, property rights are as civil as other rights. The civil nature of property is also demonstrated by historical evidences. As was shown, throughout the ages, irrespective of such factors as the inequality or equality of men, religion, language, belief in natural, customary, or conventional law, property has been considered conductive and basic to civilization.

"It is argued that the favoring of civil rights is justified on the grounds that these rights are most important for the functioning of democracy. This argument is easily refuted. Although it is admitted that civil rights are necessary for democracy, the reason why they should be more necessary for democracy than other liberal rights cannot be understood. Indeed, civil rights are no more required for popular government than are such rights as, for example, freedom from arbitrary arrest or execution. A person who has been executed has been deprived not only of his life, but also of his

ability to participate in the democratic process. A man who is imprisoned is deprived not only of his freedom of movement, but also of his democratic rights. The situation is not different in the case of infringements upon property.

"A person who has lost his property usually does not have the same voice in public affairs as before. The loss has a damaging effect upon his prestige. The fact that he has become poor will adversely effect the exercise of his democratic rights. The person who is deprived of his property through legislation and not by his own fault nor by accident, is in a worse situation. A stigma becomes attached to his property. Doubts about its honest acquisition will be raised. He is not only punished through expropriation, but also through an impairment of his honor. Both lessen his effective participation in the democratic process. The clearest example of this situation occurs in Communist countries where those who are expropriated are virtually reduced to second-class citizenship and are often excluded from participating in government. Although the deprivation of property in free nations does not assume such drastic forms and, as social legislation, appears to be more palatable, it signifies a difference in degree only from Communist practice. Deprivations of property through social legislation are indeed as subtle as they are outrageous negations of that cherished principle, no punishment without law.

"The truth of the proposition that civil rights are more important for the functioning of democracy than are property rights is dubious from still another point of view. Those who prefer those rights because they are supposed to be conducive to the working of democracy want, by their own admission, a working democracy. Their neglect of property rights is, however, apt to produce the very opposite. Overemphasis on such rights as freedom of speech, association, and assembly will make men intoxicated with power and create those hallucinations about their political ability that often have resulted in anarchy and despotism. A working democracy is an orderly democracy. And order in a democracy is achieved to no small extent by permitting those who own property to have an ample share in government. Having something at stake, and in general being the more intelligent, industrious, and progressive part of the population, their actions will not be motivated by passion, and they will not be apt to make experiments which might endanger the foundations of government and order. Therefore, only if private property enjoys the same degree of protection as civil rights, does there exist the guarantee for a working democracy.

"The argument that such rights as freedom of speech, assembly, and association are more important for democracy than are property rights is thus not convincing and not valid as a basis for assigning priority to the former rights. Even if one could not prove that property rights are as much a prerequisite for democracy as are 'civil' rights; even if 'civil' rights might be a more essential prerequisite, then a discrimination against property still would not be justified. For no discrimination against any liberal right can be justified on the grounds that that right is not a prerequisite for democracy. The decisive factor is compatibility with freedom, not with democracy. Otherwise, a means would be elevated over the end, and liberty might be lost.

"The proponents of the idea that 'civil' rights are more important than other liberal rights because they are more essential for the functioning of democracy defeat their own purposes. Instead of advancing the prestige of 'civil' rights, they lessen it. Democratic rights are inferior to liberal rights. Therefore, an emphasis upon the fact that 'civil' rights are more conductive to democracy cannot enhance their importance. On the contrary, if one stresses that such rights are more relevant for democracy, then he asserts that they are more democratic. This amounts to transforming liberal rights into democratic rights, degrading them from superior to inferior status, from an essential part of freedom to a mere prerequisite for that which is considered a mere means for the realization of freedom—democracy.

"This does not imply that property rights are necessarily undemocratic. None of the liberal rights are incompatible with democracy. They cannot oppose without difficulty a form of government which is likely to guarantee freedom. Since they permit positive action, they also allow for participation in government. Freedom of speech, for example, does not imply only the freedom to express one's thought merely for the sake of talking, but also the right to advance certain ideas for one's own benefit, or for that of society, and to participate in the shaping of public policy. The situation is similar in the case of other liberal rights, including those of property. The protection of private property does not imply merely something static. It also guarantees the free use of property to one's advantage as well as that of the public, and opens the way for the owner's participation in government. Since the protection of property frequently is believed to result mainly from egoistic motives, the blessings of property for the welfare of society are overlooked as often as the blessings of 'civil' rights are overemphasized. The latter is due to the belief that these rights do not stem from egoistic considerations to any great extent. However, there is no compelling reason to believe that a man who uses his freedom of speech and association is less interested in his own advancement than a man who uses his property. Furthermore, it is not evident why freedom of expression or of rabble rousing should be more valuable for the functioning of democracy than the ability to acquire and use property. Property rights as well as other liberal rights are not opposed to democracy. It is true that they are less likely to degenerate into democratic rights than are 'civil' rights. However, that relative immunity from democratic vogues does not make them necessarily undemocratic.

"Thus the position of property in the scale of human rights is clear. Like other liberal rights, those of property are superior to democratic rights. Property rights do not occupy an inferior position among liberal rights and definitely are equal to so-called 'civil' rights." (Id. at 45–48.)

REFUTATION OF HUMAN RIGHTS DOGMA

The invalidity of the "human rights" dogma was clearly established by witnesses appearing before the Senate Committee on Commerce in opposition to the proposed public accommodations law. The incisive remarks of the Governor of the great State of Florida constituted a complete refutation of that dogma. And in so doing he reduced this whole controversy to the one real issue presented. The Governor of Florida declared that—

"The real issue you must resolve is between conflicting demands for freedom.

"What is here attempted is to give primacy to the freedom of some to go where they wish and to buy what they wish over the freedom of others to own private property.

"What this bill S. 1732 proposes to do is to take part of that right away from (the owner) and give it to someone else who has never earned it. We are dealing today with property rights. The only question is: Who shall have those property rights? Shall it be the man who has earned or the man who has coveted that which he has not earned?

"The only 'human rights' involved are the rights of some humans against the claims of other humans." (Hearing, supra, 919.)

There is no legitimate constitutional authority for holding that the rights of the owners of property are inferior to the 'human rights' claims of would-be intruders.

"The right of a person to operate his privately owned business as he sees fit is just as sacred as any other civil right." (*McCain* v. *Davis*, 217 F. Supp. 661, 670–671 (E.D. La. 1963) (concurring opinion).)

DUTIES OF BUSINESSMEN AT COMMON LAW

At common law an innkeeper was held to be under a duty to the general public to serve, without discrimination, all who sought to be served. On the other hand, proprietors of taverns, restaurants, theaters, racetracks, swimming pools, and other places of amusement were under no such obligations; they enjoyed an absolute power to serve whom they pleased. This right of the operators of such private enterprises to select the clientele they will serve and to make such selection based on color, if they so desired, has been repeatedly recognized by the appellate courts of this Nation. (*State* v. *Clyburn*, 247 N.C. 455, 101 S.E. 2d 295 (1958).) This common law power of exclusion continues to prevail unless changed by State or local enactments. (*Madden* v. *Queens Jockey Club*, 296 N.Y. 249, 72 N.E. 2d 697, 698 (1947).)

"[Under the common law] the innkeeper must furnish proper accommodations in the way of lodging, food, etc. so far as they are available. * * * He becomes 'practically an insurer of the safety of the property entrusted to his care' by the guest * * * and he incurs other responsibilities which need not be detailed here. In return, he has a lien on the property of his guest for the reasonable charges of such keep and entertainment, both at common law * * * and under our statute.

"A restaurant on the other hand, is an establishment where meals and refreshments are served.

"The proprietor of a restaurant is not subject to the same duties and responsibilities as those of an innkeeper, nor is he entitled to the privileges of the latter. * * * His rights and responsibilities are more like those of a shopkeeper. * * * He is under no common-law duty to serve everyone who applies to him. In the absence of statute, he may accept some customers and reject others on purely personal grounds." (*Alpaugh* v. *Wolverton*, 184 Va. 943, 948, 36 S.E. 2d 906, 908 (1946).)

A clear distinction also exists in common law between the functions and obligations of an inn or hotel and those of a tavern or alehouse.

"The one was instituted for the weary traveler, the other for the native; the one furnished food that the traveler might continue his journey, the other furnished drink for the mere pleasure of neighbors; the one was open to the traveler for protection at night, the other turned its guest out at the very moment when he most needed protection, and left him to find it, if his remaining senses permitted him to do so, in his own home. It is unnecessary, therefore, to point out the fact that a tavern is not an inn, and the innkeeper's duties do not extend to the tavernkeeper." (*Nance* v. *Mayflower Tavern*, 150 P. 2d 773, 775–76 (1944), quoting Beale, the Law of Innkeepers and Hotels, p. 5 (1906).)

With regard to theaters—

"The proprietor of a theater, unlike a carrier of passengers, is engaged in a strictly private business. He is under no implied obligation to serve the public and, in the absence of statute, is under no duty to admit everyone who may apply and be willing to pay for a ticket. The fact that the business is carried on under a license is generally regarded as not changing the character of the business from a private one to a public one." (10 Am. Jur. 915 (1937).)

The common law principles applicable to places of amusement were more recently enunciated by the Court of Civil Appeals of Texas in a case involving the denial of the use of the facilities of a swimming pool.

"The right of a purchaser of a ticket to enter and remain at a theater, circus, racetrack, or private park, is a mere revocable license. The proprietor of an amusement enterprise may deny admission to anyone and a person having entered may be forced to depart on request, and if he refuses to depart, he may be removed with such force as is necessary to overcome his resistance. No action will lie, in the absence of some statute regulating admission to places of amusement, for refusal to admit any person. If the license to enter be revoked by the proprietor and a ticketholder ejected without unnecessary force, the only remedy of the holder of the ticket is an action for breach of the contract, and his damages are limited to the price of the ticket and any expenses incident to the purchase of the ticket and attending the place of amusement." (*Terrell Wells Swimming Pool* v. *Rodriguez,* 182 S.W. 2d 824, 825–26 (1944).)

It is quite clear, therefore, that the common law has never imposed upon private proprietors the restrictions now sought to be imposed by the Civil Rights Act. Of course, some States and cities have, by statute or ordinance, imposed restrictions upon proprietors. A brief examination of some of these laws in operation will give some insight into the defects of the public accommodations section of the proposed Civil Rights Act.

RADICAL NATURE OF PUBLIC ACCOMMODATIONS LAWS

The enforcement of these local and State public accommodations laws requires an extensive meddling by government in private business affairs. The nature and the extent of this intrusion can be readily ascertained from administrative reports and judicial opinions concerning the enforcement of these laws. A good measure of this interference is found in the résumé of a New York case arising out of the refusal of a barber to give a Negro a haircut. The Negro had filed a complaint charging discrimination in a place of public accommodation. The respondent claimed that he did not know how to cut a Negro's hair.

The pertinent section of the New York law prohibiting discrimination in places of public accommodation provides in part as follows:

"It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color, or national origin of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities, or privileges." (N.Y. Exec. Law, Art. 15, sec. 296.2.)

The investigating commissioner assigned to the case found that probable cause existed for crediting the allegations of the complaint and adjusted the matter by conference, conciliation and persuasion. But in his determination, he had construed the provisions of the act to mean that—

"The owners and operators of a barber shop are obligated by law to service all who apply without regard to race, creed, color or national origin; also to employ barbers who are qualified to service customers of every creed, color, or national origin. If you believe that different tools are required to cut the hair of Negroes then you are duty bound to procure the same and also to qualify yourself and your assistants to service Negroes. (*Brown* v. *Leo Federico d/b/a Fourth Avenue Barber Shop*)". Report of Progress, New York State Commission Against Discrimination 40 (1956).

The radically constrictive nature of a public accommodations law was clearly enunciated by a dissenting judge in the Washington case of *Browning* v. *Slenderella System of Seattle,* 54 Washington 2d 440, 341 P. 2d 859 (1959). The plaintiff in the case brought an action for damages for the "embarrassment, humiliation, mental anguish and emotional shock" allegedly suffered in consequence of discrimination against her by the manager of a reducing salon in Seattle, Wash. The lower court found that the defendant had discriminated against the plaintiff in violation of the Washington public accommodations act. The pertinent part of that statute provided:

"Every person who denies to any other person because of race, creed, or color, the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement, shall be guilty of a misdemeanor." (RCW 9.91.010(2).)

The trial court drew the conclusion of law that the plaintiff was entitled to a judgment of $750, together with costs. Judgment was entered for that amount and the defendant appealed.

A majority (6) of the justices of the Supreme Court of Washington with three members dissenting, sustained the judgment for the plaintiff, but remanded the cause back to the trial court for the reduction of damages to the nominal sum of $100.

The following dissent to the decision of the majority was filed:

"MALLERY, Judge (dissenting).

"Because respondent is a Negress, the Slenderella Systems of Seattle, a private enterprise, courteously refused to give here a free reducing treatment, as advertised. She thereupon became abusive and brought this civil action for the injury to her feelings caused by the racial discrimination.

"This is the first such action in this State. In allowing respondent to maintain her action, the majority opinion has stricken down the constitutional right of all private individuals of every race to choose with whom they will deal and associate in their private affairs.

"No sanction for this result can be found in the recent segregation cases in the U.S. Supreme Court involving Negro rights in public schools and public buses. These decisions were predicated upon section 1 of the 14th amendment to the U.S. Constitution, which reads: 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

"In the pre-Warren era, the courts had held that the privileges of Negroes under the 14th amendment, supra, were not abridged if they had available to them public services and facilities of equal quality to those enjoyed by white people. The Warren anti-segregation rule abandoned that standard and facilities as the sole test of Negro equality before the law in such public institutions.

"The rights and privileges of the 14th amendment, supra, as treated in the segregation decisions and as understood by everybody, related to public institutions and public utilities for the obvious reason that no person, whether white, black, red, or yellow, has any right whatever to compel another to do business with him in his private affairs.

No public institution involved

"No public institution or public utility is involved in the instant case. The Slenderella enterprise was not established by law to serve a public purpose. It is not a public utility with monopoly prerogatives granted to it by franchise in exchange for an unqualified obligation to serve everyone alike. Its employees are not public servants or officers. It deals in private personal services. Its business, like most service trades, is conducted pursuant to informal contracts. The fee is the consideration of the service. It is true that contracts are neither signed, sealed, nor reduced to writing. They are contracts, nevertheless, and, as such, must be voluntarily made and are then, and only then, mutually enforceable. Since either party can refuse to contract, the respodent had no more right to compel service than Slenderella had to compel her to patronize its business.

"There is a clear distinction between the nondiscrimination enjoined upon a public employee in the discharge of his official duties, which are prescribed by laws applicable to all, and his unlimited freedom of action in his private affairs. There is no analogy between a public housing project operated in the Government's proprietary capacity, wherein Negroes have equal rights, and a private home where there are no public rights whatever and into which even the King cannot enter.

"Private business' discrimination legal

"No one is obliged to rent a room in one's home; but, if one chooses to operate a boardinghouse therein, it can be done with a clientele selected according to the taste or even the whim of the landlord. This right of discrimination in private businesses is a constitutional one.

"The ninth amendment to the U.S. Constitution specifically provides: 'The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.'

"All persons familiar with the rights of English-speaking people know that their liberty inheres in the scope of the individual's right to make uncoerced choices as to what he will think and say; to what religion he will adhere; what occupation he will choose; where, when, how, and for whom he will work, and generally to be free to make his own decisions and choose his course of action in his private civil affairs. These constitutional rights of law-abiding citizens are the very essence of American liberties. For instance, they far outweigh in importance the fifth amendment to the U.S. Constitution which excuses criminals from giving evidence against themselves. It was, in fact, an afterthought. Our constitutional forefathers were chiefly concerned with the rights of honest men. They would have specified their rights with the same particularly that they did in regard to criminals if they had foreseen that courts would become unfamiliar with them.

"In Saturday Evening Post's article of April 4, 1959, page 32, entitled 'When a Negro Moves Next Door,' a Negro, who had bought a house in the white district of Ashburton in Baltimore, told the assembled neighbors: 'If you want to protect your home and your way of life * * * continue living in your own home. * * * Don't think you can escape the problem simply by putting your house up for sale and running away. * * * Even if you move far out in the suburbs. * * * There will be Negroes living near you. As a matter of fact, * * * if this area turns all Negro, I plan to move out to the suburbs with you.'

"If he does make such a move, he will be discriminating against Negroes. This he has a right to do for discrimination is but another word for free choice. Indeed, he would not be free himself if he had no right so to do. In dealing between men, both cannot be free unless each acts voluntarily, otherwise one is subjected to the other's will.

Right to exclusiveness essential

"Cash registers ring for Negroes as well as for a white man's money. Practically all American businesses, excepting a few having social overtones or involving personal services, actively seek Negro patronage for that reason. The few that do not serve Negroes adopt that policy either because their clientele insist upon exclusiveness, or because of the reluctance of employees to render intimate personal service to Negroes. Both the clientele and the business operator have a constitutional right to discriminate in their private affairs upon any conceivable basis. The right to exclusiveness, like the right to privacy, is essential to freedom. No one is legally aggrieved by its exercise.

"No sanction for destroying our most precious heritage can be found in the criminal statute cited by the majority opinion. It does not purport to create a civil cause of action. The statute refers to 'place[s] of public resort.' This phrase is without constitutional or legal significance. It has no magic to convert a private business into a governmental institution. If one man a week comes to a tailor shop, it is a place of public resort, but that does not make it a public utility or public institution, and the tailor still has the right to select his private clientele if he chooses to do so. As a matter of fact, the statute in question is not even valid as a criminal statute. Obviously, this is not the occasion, however, to demonstrate its unconstitutionality.

"The majority can find no sanction for violating the constitutional rights of the appellant by citing the conflicting decisions of foreign states for two conclusive reasons. (1) Only this court can declare the law or set a precedent in Washington. (2) Foreign courts are in substantial conflict on so many questions of law that they can neither be harmonized nor followed. Practical uniformity of laws has been attained between the States only by the uniform acts passed by the several legislatures.

"Whites subjected to involuntary servitude

"The majority opinion violates the 13th amendment to the U.S. Constitution. It provides, inter alia: 'Neither slavery nor involuntary servitude * * * shall exist within the United States.'

"Negroes should be familiar with this amendment. Since its passage, they have not been compelled to serve any man against their will. When a white woman is compelled against her will to give a Negress a Swedish massage, that too is involuntary servitude. (*Henderson* v. *Coleman*, 150 Fla. 185, 7 So. 2d 117 (1942).)

"Through what an arc the pendulum of Negro rights has swung since the extreme position of the Dred Scott decision: Those rights reached dead center when the 13th amendment to the U.S. Constitution abolished the ancient wrong of Negro slavery. This court has now swung to the opposite extreme in its opinion subjecting white people to involuntary servitude to Negroes." (341 P. 2d 867–869.)

AFFECTED BUSINESSES TRANSFORMED INTO PUBLIC UTILITIES

The Assistant Attorney General of the United States was asked whether it was the purpose of the proposed Interstate Public Accommodations Act of 1963 to place a businessman in the same category as a public utility that has to serve everybody. (Hearings, supra, 246.) He replied that the bill would not turn the designated places of business into public utilities. Ibid.

Judicial definitions of the term "public utility" controvert the position of the Assistant Attorney General. "Public utility" has been defined as follows:

"Generally speaking, the term 'public utility' comprehends any facility employed in rendering quasi-public services such as waterworks, gasworks, railroads, telephone, telegraph, etc.; the use and enjoyment of which facilities the public has a legal right to demand." (*Pulitzer Pub. Co.* v. *F.C.C.*, 94 F. 2d 249, 251 (D.C. Cir. 1937).)

"The true criterion by which to judge of the character of the use of any plant or system alleged to be a public utility is whether or not the public may enjoy it by right or by permission." (*Junction Water Co.* v. *Riddle*, 155 Atl. 887, 889 (1931).)

"A 'public utility' is a person, corporation, or other association carrying on an enterprise for the accommodation of the public, the members of which as such are entitled as of right to use its facilities, and it carries with it the duty of one attempting to furnish service to serve the public and to treat all persons alike without discrimination.

"In other words, a public utility is a person, corporation, or association engaged in a business affected with a public interest and therefore must serve everyone in the area where it operates who applies for service. It cannot refuse such service." (*Trico Elec. Corp., Inc.* v. *Corp. Comm's.*, 86 Ariz. 27, 339 P 2d 1046, 1054 (1959).)

There is no apparent difference between the duties to the consumer public that would be imposed upon the operators of the designated business establishments by the proposed public accommodations law and the obligations held to be inherent in the operation of a public utility.

CONCLUSION

The main thesis of the testimony of both the Secretary of Labor and the Under Secretary of Commerce was that the enactment of a Federal public accommodations law would have a broad, beneficial effect on the economy of those areas not presently subject to a public accommodations statute. The massive demonstrations in many nonsouthern areas are proof that the predicted degree of effect in southern areas of the proposed Federal Public Accommodation Act has not even been achieved in those areas already subject not only to a public accommodations statute but also to other so-called model laws covering housing, employment, and education as well.

Proponents of civil rights laws have cast serious doubts on the effectiveness of such laws to solve social, economic, and educational problems.

The Under Secretary of Commerce declared that—

"[He] did not mean to imply by [his] testimony that the North is complying 100 percent or has solved this problem completely.

"There is no question that this discrimination in the North still exists to a large degree, a large measure." (Hearings, supra, 735.)

"This is a national problem. This discrimination exists in every State in one form or another, in one shade or another." (Id. at 737.)

"This is a problem which confronts Negroes in every part of this country." (Id. at 746.)

The Governor of Minnesota acknowledged—

"The difficulties that Negroes and other members of minority groups have in securing housing, suitable employment, and equal educational opportunities in Minnesota." (Hearings, supra, 1114.)

This condition existed notwithstanding his opinion that—

"Generally speaking, Minnesota today has the best body of law and the best record of executive action against discrimination of any State in the Nation." (Ibid.)

The Governor of Wisconsin wrote that—

"It is unquestionable that the State of Wisconsin has made very substantial progress in the fight against discrimination.

"I wish it were possible to say that we have solved this problem altogether, but this would not be in accord with the facts. Discrimination is still especially acute, in my State, in the areas of housing and employment. Nevertheless, we have made some progress under our civil rights law in the direction of our ultimate goal of equal rights for all." (Hearings, supra, 1175.)

During the course of the hearings held by the Senate Committee on Commerce on this bill, the junior Senator from California called the attention of the Attorney General of the United States to current California laws, against discrimination in public facilities, employment, and housing. He then asked the Attorney General to advise him what, if anything, the public accommodations bill would add to those laws already in effect in California. The Attorney General replied:

"I don't believe it would, Senator. You have covered it in California. If any of these matters arose we would defer to the laws of California and those responsible for enforcing the law." (Hearings, supra, 81.)

The junior Senator from California then noted that he had a statement from the Governor of California that—

"Los Angeles is the third worst segregated city on housing in the United States and we do have our problems with reference to segregation in housing, in education, and in employment." (Ibid.)

The Attorney General replied that the Senator was correct.

The junior Senator from California then posed the following questions:

"After we pass all these laws, where do we go from there, when, as I say, in California we have the law and somehow the law has not gotten the job done?

"Would you indicate to this committee where you lay down the guidelines as to where we go after we pass this bill?" (Ibid.)

The Attorney General replied:

"Senator, as I have said frequently, I don't think the passage of this law and the other laws by themselves are going to get this job done. I think we are going to still have problems and this is not going to disappear. Assuming we have the passage of this law in September or October, this problem is not going to disappear in December or the following January or the January after that.

"We are going to have problems in this field in my judgment for some time to come. I think a lot of it goes back to education, vocational training and employment, basically to employment. As I said this morning, I think that the fact you can go to a restaurant or to a hotel or to a variety store doesn't mean much, if you don't have the money to shop there, you don't have the money to spend there, you don't have enough money to feed your children and you have been unemployed for 3 or 4 years. I think there has been a great deal of hypocrisy among us from the North as to what is happening in South Carolina, or Birmingham, or Louisiana, or Mississippi.

"We have many problems in our own communities which haven't been faced up to. We are spending so much time looking at what Bull Connor is doing in Birmingham that we haven't bothered to take the steps, for one reason or another, to solve the problems in our own community.

"I think the problems, to a great extent, rests with education and making jobs available for our people. But in New York, I think there is an FEPC law, there are housing laws, and you still have two to three times as high unemployment among Negroes as you do white people in some of those metropolitan areas in the State of New York." (Id. at 81–82.)

The Attorney General then declared that "the passage of legislation is not going to get this job completed." (Ibid.)

He concluded his response to the Senator's question with the statement that "I think the problem is going to be with us for a long period of time and the mere passage

of this bill or any of the bills being considered under the category of civil rights bills at the present time is not going to give the complete answer. We have to do it, but there is a great deal more that needs to be done as well." (Ibid.)

The Attorney General had earlier declared that "The problem is not just in FEPC. There is an FEPC law which covers two-thirds of the United States at the present time. Most of our States, a majority of our States, by far, have FEPC laws. That is not putting the Negro to work in Harlem, N.Y., or New Jersey, or Chicago, or Los Angeles. They are unemployed. So this is not just a question of FEPC; it is a question of education. It is a question of vocational training. It is a question of school dropouts." (Hearings, supra, 64.)

As one reporter observed, "One stark fact stands out. If all the measures proposed thus far by the Kennedy administration were carried out, the racial conflict in Cambridge—and in innumerable other communities like this in the border States—would still be unresolved. The reason is sizable unemployment plus the unemployables, the functional illiterates, who are unfitted for jobs if they were available." (New York Post, Oct. 1, 1963, p. 29, col. 2–3.)

The managing editor of the New York Times commented on the civil rights laws in effect in New York City as follows:

"In my own city of New York, I think there's more phony progress been claimed than most any place I know. When the shakedown comes, you find the laws you've passed are not adequate" (U.S. News & World Report, Nov. 11, 1963, p. 87, col. 2).

According to a Washington Post editorial writer—

"Even if the compromise bill approved last month by the House Judiciary Commitee were enacted without being watered down, 'it wouldn't work any miracles.'

"None of its provisions will improve the lot of Negroes in such places as Washington, New York City or Michigan." (Washington Post, Nov. 13, 1963, p. D2, col. 3–4.)

An analysis of the Constitution of the United States makes it crystal clear that title II of the proposed Civil Rights Act cannot be sustained under any rational interpretation of the 13th amendment, the 14th amendment, or the commerce clause. No legislation of this sort has ever been sustained under any of these provisions of our Constitution, and it would be an exercise in futility for the Senate to give its approval to such legislation now.

Proponents of this legislation have failed to prove that it would benefit the people of the United States; indeed, such evidence as they have adduced in an effort to support title II of the civil rights bill has in fact militated against its passage.

The portion of this bill to which I address myself today is bad legislation. It would do nothing to improve the lot of those for whose benefit it is allegedly intended. But it would do a great deal, more than any other legislation in my memory, to reduce the freedom of all our people. I will not be a party to an instrument of oppression, no matter what name it may be given. And I suggest that the American people, awakened to the tyrannical features of this legislation, will demand its defeat.

Mr. GORE. I should like briefly to respond to the statements made by the distinguished senior Senator from New York and the distinguished senior Senator from Rhode Island.

If Senators will recall carefully the statements of the very able senior Senator from New York, he did not say that section 601 did not provide the statutory authority not only for the order that is already issued, but one which has been urged upon the President that goes much further. He limited himself to saying that no enforcement procedure was provided for programs involving insurance or guarantee. In that he is correct. The enforcement procedure provided in section 602 does not apply to contracts of insurance or guarantee. So, the Senator is correct, but think about the implications of the exact statement he made. The bill is silent as to the procedures that would be used in implementing section 601 in this type of program.

The distinguished senior Senator from Rhode Island [Mr. PASTORE] made an emotional appeal about the travesty that it would be if Congress should fail to enact this provision. If so, Congress has committed many travesties. It has committed a travesty every time this issue has been presented for the last 10 years.

Since the debate began, I have refreshed my memory as to how the vocational educational program operates. I thought I remembered it, because I was superintendent of education in my State. But I have verified that, in Tennessee, the money is paid by the Federal Government to the State division of vocational education. The county pays a vocational education teacher. Twice a year from State funds a payment is made to the county, and the county is thus reimbursed in the amount of the Federal contribution.

The Senator speaks about a travesty. The county adjoining my own had the misfortune last year of its Negro high school burning to the ground. After public hearings and mass meetings, a decision was made not to rebuild a segregated school. Instead, Putnam County, Cookeville, Tenn., invited both Negro students and the Negro faculty to join in one central high school. That school has so operated for a year. I challenge the Senator from New York [Mr. JAVITS] or the Senator from Rhode Island to cite an example of good race relations in their States equal to that.

Yet in that county are two other high schools. In that county are many small rural elementary schools. Some of those rural schools operate on a segregated basis. Under title VI, if in that county one school is operated on a segregated basis—as I daresay will be the case for a few years—the Federal agency would be directed to institute proceedings to cut off the aid—to what? To the entire State.

How can the Federal Government reach that county, how can the Federal Government reach that city, except through the State? The contractual relationship is between the State and the Federal Government.

This would be a real travesty. Such action would work great hardship and deny to little children Federal aid and vocational education because of something over which they have no control.

The whole thrust of this title is that we must correct all our imperfections overnight. Unless we do so, the State will be coerced by a denial of Federal funds. Unless we do so overnight, the county may be denied participation in one program after another.

True, there are safeguard procedures; but they would not delay action very long. What is an appeal under the Administrative Procedure Act worth? Practically nothing. Who would determine what constitutes discrimination? Who would establish the rules and regulations by which aid would be cut off? Not Congress. Under this bill we would delegate that authority to the executive branch. It can become very oppressive. This title would, indeed, become a travesty by denying aid to needy people, to hungry children. How could a Federal contribution be made to the school lunch program in a county if any part of that county system was operated on a segregated basis?

I live with this problem in my State every day, and every hour of every day. Some Senators may think it can be solved overnight. But I say that better relations between the races will not come from street riots; they will not come from coercion. They will come—they are coming—through education, tolerance, good will, and understanding. This requires time.

Title VI is based on the theory that discrimination must be eliminated immediately, or else, after a few procedural steps, aid will be cut off to any county or to any State in which discrimination—whatever that is—is practiced, the definition of the discrimination to be made by a Federal official not elected by the people.

I say this is a fundamental issue. Does Congress wish to confer upon the Executive power that is, in many respects, greater than would be an item veto? If we wish to surrender the power to prescribe conditions under which Federal assistance will be provided, title VI is tailor made for that purpose.

Mr. ALLOTT. Mr. President, I yield myself 5 minutes.

I have listened with great interest to the remarks of the distinguished Senator from Tennessee, for whom I have great respect.

Like others who have spoken before me this afternoon, I think the bill represents nothing if we continue to use tax moneys which are collected from every person in the country in behalf of one group. This is not a punitive section. It is not meant to be punitive. It is only meant to be fair. Anyone who reads sections 601, 602, and 603 can come to no other conclusion. Section 601 provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

How could that language be more clear? Is there any Member of this body who will disagree with the stated purpose of that section? The distinguished Senator from Connecticut [Mr. RIBICOFF] stated this unequivocally on the floor of the Senate a few weeks ago. He said that if anyone disagreed with the purpose of that provision, he should so state at the time. No one has attempted to answer the Senator in the interim.

I pointed out in a speech on the floor of the Senate a few days ago how the United States in various parts of its legislative program, by way of railroad land grants, by way of the Hatch Act, by way of the Hill-Burton Act, by way of the

Federal Highway Act—in every program we have enacted to provide assistance to the States—has imposed limitations, requirements, and ground rules.

For example, in the Hill-Burton Act, or at least in the regulations pursuant to it, Congress provided which way doors in hospitals must open; it directed how big the hospital must be; how many rooms it must have; the number of beds in a room, and so on, almost ad infinitum.

So if the Federal Government is to help the States or other local governments or schools by way of Federal programs, taking money from every person in the country, it seems to me, that we have some obligation to make certain that no person is discriminated against.

The distinguished Senator from Tennessee has stated that we are trying to correct everything overnight.

Line 7, page 36, of the substitute reads:

> No such rule, regulation, or order shall become effective unless and until approved by the President.

Surely he does not think the President is going to get out a meat cleaver and chop off all these programs immediately until the conciliation, reasoning, and discussion which is provided for by section 602 have taken place. I do not believe the President would do it. I do not believe President Eisenhower would have done it, and I do not believe any other President who must take action under this title of the bill would do it until every effort had been made to effect conciliation.

Mr. President, the second provision of section 602 provides that no action shall be taken until the department or agency concerned has advised the appropriate person or persons of failure to comply with the requirements and have determined that compliance cannot be secured by voluntary means. It states specifically that it does not apply to the whole State, as the Senator would say, but applies only to that particular political entity or part thereof or other recipient as to whom such a finding has been made.

So, Mr. President, if we are going to undertake Federal programs we have to expect to limit these programs. I have many times endeavored to keep these provisions from being oppressive. I do not think this is oppressive.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ALLOTT. Mr. President, I yield myself 1 additional minute.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 1 more minute.

Mr. ALLOTT. I do not think this is oppressive. Each one of us must decide whether under the first few lines of this title we are able to say that any person in this country because of his race, color, or national origin would be excluded from any Federal program, grant, or loan—grant, or loan to which he contributes equally with each and every one of the other people of the country.

Mr. TOWER. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Texas is recognized for 1 minute.

Mr. TOWER. Mr. President, if State and local governments are going to allow themselves to be reduced to a state of abject dependency on the Federal Government and to operate with Federal funds, they must be made to understand what the consequences will be.

I have labored long and hard against this bill, because of the bad provisions in it.

However, I regard this provision as satisfactory; and, consistent with my previous actions on the provisions of the bill, I support this provision, and I will vote against the amendment of the Senator from Tennessee.

Mr. RIBICOFF. Mr. President, I yield myself 2 minutes.

Mr. President, I think we should clearly understand the answer to the question raised by the Senator from Tennessee.

First of all, the cutting off of Federal funds will be the last step, not the first one. Second, even when a fund cutoff is involved, the cutoff will be limited to the place where the discrimination is occurring. Thus, in terms of two schools in a town—one segregated and one not segregated, it is clear that the effect of title VI would be specifically limited to the particular program or part thereof in which segregation was involved. Therefore, under the rules and regulations and the statutory language itself, it is clear that the allocation of the Federal funds could be ended only to the one school in which segregation was being practiced, and in no way would any harm or disadvantage be visited upon the other school—or, in the case of whole towns, the town—which had desegregated. Only where the discrimination occurs are the Federal funds in jeopardy.

Mr. LONG of Louisiana. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 3 minutes.

Mr. LONG of Louisiana. Mr. President, I regard this section as an unwise one, although I have little hope as to what the Senate will do about it.

In Louisiana the Louisiana Legislature passed a "suitable home" provision, similar to laws which a number of other States including at least one Northern State had on their statute books. Some persons objected to that law; some of them claimed the Louisiana law was discriminatory. The Louisiana law was aimed at preventing the use of Government funds for the benefit of persons engaged in immoral practices. The Louisiana law stated, in effect, that if a woman was living in sin, if she was living in a home in which there was not a proper moral climate, if she also had children in the home, support would not be given by the State of Louisiana to that sort of thing. Of course, at least one Northern State thought of that first; and then the Louisiana Legislature passed that law.

The Secretary of Health, Education, and Welfare, now the junior Senator from Connecticut [Mr. RIBICOFF], was asked to cut off Federal aid to Louisiana.

What happened? Two acts of Congress were passed—and most of the Senators now present voted for them—to give Louisiana 16 months in which to work out that problem; and Louisiana did so. About 80,000 individual cases were involved. But the problem was worked out, with the result that 78,000 of them remained on the rolls and continued to receive that financial aid, while Louisiana worked out the problem with regard to the other 2,000.

It was necessary for the Louisiana Legislature to pass another act, to satisfy the Federal requirements; and most of the Senators now serving in this body voted again—a second time—to give Louisiana time to work out that problem; and Louisiana did work it out, to the complete satisfaction of the Federal authorities, as well as the State authorities.

But under the pending proposal, Louisiana would have only 30 days in which to handle this problem; and if at the end of the 30 days it had not been handled to the satisfaction of the Federal authorities, the Federal funds heretofore going to Louisiana would be cut off. In short, that aid to both the white people who were being helped and the colored people who were being helped would be cut off, and thereafter none of them would receive any of the aid, even though the only claim was that there had been intent to discriminate against about 2 percent of the 80,000 persons.

Thus, Mr. President, even though only perhaps 2,000 were involved in such a claim, all 80,000 would, from that time on, no longer receive such aid, and thereafter would be faced with the prospect of starvation; starvation would be their lot while Louisiana was attempting to make a satisfactory adjustment.

The Governor of Louisiana said:

> We have no choice. We will take care of the most needy cases with the funds we have left, and the rest of them will just have to starve.

Given 16 months to work out the problem, tempers cooled and reason prevailed. This calm reconciliation of divergent views could not occur under title VI.

What concerns me now particularly is section 601:

> No person in the United States shall be subjected to discrimination under a program or activity receiving Federal financial assistance.

Mr. President, if a court is to be allowed to come to the conclusion—a conclusion which some courts may wish to reach—that a building and loan association is receiving Federal financial assistance because of Federal Government insurance of its funds——

The PRESIDING OFFICER. The time the Senator from Louisiana has yielded to himself has expired.

Mr. LONG of Louisiana. Mr. President, I yield myself 2 more minutes.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 2 more minutes.

Mr. LONG of Louisiana. Or, Mr. President, if it were decided that Federal financial assistance was being received by a bank because its deposits

were insured by the Federal Deposit Insurance Corporation, then this section could be construed to mean that whenever a citizen wished to obtain a bank loan, the Federal Government would have authority to dictate the terms and conditions of the loan. The Federal Government could decree open housing throughout the country; and the same could be done in connection with the FHA, the VA, the banks under FDIC, and the building and loans whose deposits are insured to require open housing throughout the Nation, as a condition precedent to a loan, although in most States open housing has been voted down by a margin of more than 2 to 1, and only a few cities have open housing.

On the other hand, we know very well how the Supreme Court would be likely to decide such cases, for the Court seems to be bent on achieving the extreme—almost as much as the Department of Justice is.

The result could be, as the Senator from Tennessee has pointed out, an open-housing law for the entire Nation, contrary to everything that Senators have said is intended.

Mr. KEATING. Mr. President, I yield myself 2 minutes.

If there is anything in the whole field of civil rights that is unconstitutional, illegal, and immoral, it is to have the tax collectors take money out of the pockets of each taxpayer in the Nation without asking what the color of his skin is, or what his religion is, or his nationality background and then have the Federal Government use that money to help build or operate a facility which is segregated. That is clearly unjust, illegal, and immoral.

Title VI is intended to put an end to this injustice. While it is not strong enough unequivocally to eliminate the practice, it is a step forward. To strike title VI from the bill would be to emasculate the legislation at its most important point.

We have been told here time and again when amendments have been offered to other bills which would put an end to this illegal and immoral practice, that we should not support such amendments. We have been told that such language properly belongs in a civil rights bill which would some day come before us.

Now, it so happens that I have voted for all of those amendments because I thought it was right in each and every instance. This is the time, however, when we can put this principle into the general law, and the time for this idea, as our minority leader said, has come. If there is one single idea embodied in this bill which is sensible, it is embodied in this title VI. To eliminate it would be a tragedy and a travesty on justice and I hope this amendment will be defeated.

Mr. HUMPHREY. I yield myself 1 minute. I want to merely clarify one point that has been raised which needs to be set at rest. First of all, section 601 states general policy. Section 602 states the means of effectuating that general policy, the implementation and the exclusion. The exclusion relates to, as the language says, other than a contract of insurance or guarantee. So FDIC—Federal Deposit Insurance Corporation—and all activities pertaining thereto are eliminated. The Federal Housing Administration is eliminated. So let us not have any more talk about that.

Finally, may I say that the very point that was raised by the Senator from Louisiana of how the Congress and how the administration gave time for a State to work out these difficulties is exactly what is involved in this measure. It is exactly that. The procedures are set up for guaranteeing that.

It is only after the order has been issued, which may take months, Mr. President, after weeks and weeks and weeks of consultation, and voluntary compliance, it may then, and only then, 30 days after that, that a committee of Congress will be notified before the order can be effective. It must rest with the committee of Congress some 30 days.

So, Mr. President, many of these ghosts should be laid at rest or should evaporate into ether.

Mr. McCLELLAN. I yield myself 2 minutes. I wish to commend the distinguished Senator from Tennessee for offering this amendment. I had understood in the course of time when the bill came up for consideration that he would offer an amendment. Anticipating that it would be offered before any gag rule was invoked, I had prepared some remarks on the issue. I had prepared a speech that I hoped to deliver that goes into the history of Federal assistance to the States and to subordinate agencies of government. I had hoped that I might have had the opportunity, Mr. President, to have delivered this address at a time when there was time and opportunity to do it. Since I do not have that opportunity now, and since you have the gag rule, and since we can't speak on these issues at any length and with a purpose of trying to actually present the issues, I am going to ask unanimous consent. Although I am silent, I have been silenced by this cloture rule, I am going to ask unanimous consent, Mr. President, that I may at this point insert in the RECORD the speech that I had prepared, together with the attachments, the tables, and illustrations, and matters attached to it which I had intended to ask unanimous consent that I might insert in the RECORD.

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

(See exhibit 1.)

Mr. McCLELLAN. I will ask that that be done at the conclusion of my remarks. I want to say for my viewpoint that this title of this bill is clearly unconstitutional. It is one of the greatest evils that the bill contains. It constitutes a complete abdication of congressional responsibility when we delegate to the heads of the different agencies of Government, Mr. President, the authority to legislate.

The PRESIDING OFFICER. The time of the gentleman has expired.

Mr. McCLELLAN. I yield myself 1 more minute. This is the authority to legislate in this field for the rescission or cancellation or withholding of aid to the States and to the counties and the municipalities throughout this country.

Mr. President, this section, this title of the bill, makes all States, counties, and municipal institutions receiving or administering Federal aid and assistance subservient to and compels their obedience to Federal intimidation, coercion, and bureaucratic dictatorship. We are moving toward a Federal dictatorship. This is another cog in that wheel. We are going to finally move beyond the point of return, Mr. President. It is a sad hour. It is a sad hour in American history when this legislation is passed—the entire bill and particularly this title.

I understand I have used 3 minutes of my hour's time; am I correct?

The PRESIDING OFFICER. The Senator is correct.

EXHIBIT 1

INTRODUCTORY SECTION

I desire to address my remarks to title VI of H.R. 7152, the provisions of which are clearly unconstitutional. And of equal importance is the fact that, in its present form, title VI, if enacted into law will undermine, impair and maybe destroy the vast system and network of programs and activities by which the Federal Government is providing essential financial aid and assistance to State and local government for more than 100 years. I might add further that these programs and activities now involve Federal expenditures to more than 90,000 State and local governmental jurisdictions, throughout the United States and its territories. They now average in excess of $10 billion annually, and are expected to reach $10.6 billion in fiscal year 1965.

In essence, title VI would authorize and require each Federal department and agency responsible for the administration of a Federal assistance or grant-in-aid program, to terminate or refuse to grant that assistance as to any recipient whenever there has been a finding of discrimination or a denial of benefits because of race, color, or national origin. "Discrimination" is not defined. To accomplish this objective, each such department and agency would be required to establish rules, regulations or orders of general applicability, consistent with the achievement of the objectives of the statute authorizing the financial assistance, and subject to presidential approval. Although an attempt is made to provide for some type of hearing and findings of a failure to comply with requirements established by the Federal agency or department concerned, the language used is so vague that it is not possible to determine just what is required or intended.

The provisions of this title would delegate to numerous unnamed individuals in the executive branch the power to legislate with respect to hundreds of programs and activities authorized by specific statute, without meeting the constitutional requirements for such a delegation of power. You know and I know that it has long been well established that Congress cannot delegate its power to legislate to the President or other executive branch officials, without meeting certain requirements. These requirements may be summarized as follows: Congress must define the subject of the delegation, and provide a recognizable standard or criterion to guide the agent to whom legislative powers are delegated. The delegation of an unconfined discretion is equivalent to conferring legislative power on the executive and is therefore invalid.

Now who established these requirements? They are not mine, Mr. President; nor are they those of the senior Senator from Georgia. These requirements were established by the Supreme Court of the United States in a series of landmark cases.

The general principles here involved were well stated in *Hampton & Co.* v. *United States* (276 U.S. 394 (1928)), in which the

Supreme Court sustained a flexible tariff act that authorized the President to raise or lower tariff rates by 50 percent in order to equalize the costs of production in the United States and competing foreign countries.

Mr. Chief Justice Taft stated the constitutional requirements for delegation by Congress, as follows:

"The well-known maxim 'delegata potestas non potest delegari' (a delegate cannot delegate or transfer his powers), applicable to the law of agency in the general and common law, is well understood and has had wider application in the construction of our Federal and State Constitutions than it has had in private law. The Federal Constitution and State constitutions of this country divide the governmental power into three branches. The first is the legislative, the second is the executive, and the third is the judicial, and the rule is that in the actual administration of the Government, Congress or the legislature should exercise the legislative power; the President or the State executive, the Governor, the executive power; and the courts or the judiciary the judicial power, and in carrying out that constitutional division into three branches, it is a breach of the national fundamental law if Congress gives up its legislative power and transfers it to the President.

* * * * *

"The field of Congress involves all and many varieties of legislative action, and Congress has found it frequently necessary to use officers of the executive branch within defined limits, to secure the exact effect intended by its acts of legislation, by vesting discretion in such officers to make public regulations interpreting a statute and directing the details of its execution, even to the extent of penalizing a breach of such regulations.

* * * * *

"The true distinction * * * is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter, no valid objection can be made.

The Congress may not delegate its purely legislative power to a commission but having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by the Congress."

In *Panama Refining Co.* v. *Ryan,* 293 U.S. 388 (1935), a leading case on the subject of delegation, the Supreme Court held unconstitutional a provision of the National Industrial Recovery Act that authorized the President to prohibit the interstate shipment of oil produced or withdrawn in violation of State regulation. The Court declared that an absolute and uncontrolled discretion had been vested in the executive, since the statute stated no policy and provided no standard by which the validity of the President's action could be judged. Neither does title 6 of this bill provide proper standards.

In the course of that opinion, Mr. Chief Justice Hughes discussed section 9(c) of the act in question, which conferred the basic authority on the President, observing:

"We examine the context to ascertain if it furnishes a declaration of policy or a standard of action, which can be deemed to relate to the subject of section 9(c) and thus to imply what is not there expressed.

* * * * *

"This general outline of policy contains nothing as to the circumstances or conditions in which transportation of petroleum or petroleum products should be prohibited—nothing as to the policy of prohibiting or not prohibiting the transportation of production exceeding what the States allow. * * * It is manifest that this broad outline is simply an introduction of the act, leaving the legislative policy as to particular subjects to be declared and defined, if at all, by the subsequent sections."

After pointing out that the Congress had made no findings and had failed to provide standards, the Court continued:

"The Congress left the matter to the President without standard or rule, to be dealt with as he pleased. The effort by ingenious and diligent construction to supply a criterion still permits such a breadth of authorized action as essentially to commit to the President the functions of a legislature rather than those of an executive or administrative officer executing a declared legislative policy. We find nothing in section 1 which limits or controls the authority conferred by section 9(c).

* * * * *

"The question whether such a delegation of legislative power is permitted by the Constitution is not answered by the argument that it should be assumed that the President has acted, and will act, for what he believes to be the public good. The point is not one of motives, but of constitutional authority, for which the best of motives is not a substitute.

* * * * *

"The Constitution provides that 'All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.' * * * And the Congress is empowered 'To make all laws which shall be necessary and proper for carrying into execution' its general powers. * * * The Congress manifestly is not permitted to abdicate or to transfer to others, the essential legislative functions with which it is thus vested. Undoubtedly legislation must often be adapted to complex conditions involving a host of details with which the National Legislature cannot deal directly. The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its functions in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. Without capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility. But the constant recognition of the necessity and validity of such provisions and the wide range of administrative authority which has been developed by means of them cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained."

In discussing the basis for the Court's holding, Mr. Chief Justice Hughes pointed out that if the statute in question authorizing the delegation were to be upheld, "Instead of performing its lawmaking function, the Congress could at will and as to such subjects as it chooses transfer that function to the President or other officer or to an administrative body. The question is not of the intrinsic importance of the particular statute before us, but of the constitutional processes of legislation which are an essential part of our system of government."

In *Schechter Poultry Corp.* v. *United States,* 205 U.S. 495 (1935), the Supreme Court held unconstitutional section 3 of the National Industrial Recovery Act on the ground that the codemaking authority vested in the President was an unconstitutional delegation of legislative power.

In the course of the opinion, Mr. Chief Justice Hughes said:

"Second. The question of the delegation of legislative power. * * * The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the national legislature cannot deal directly. We pointed out in the Panama Company case that the Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained.

* * * * *

"Section 3 of the Recovery Act is without precedent. It supplies no standards for any trade, industry, or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them. For that legislative undertaking, section 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction, and expansion described in section 1. In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the codemaking authority thus conferred is an unconstitutional delegation of legislative power."

Mr. Justice Cardozo, in a concurring opinion, in which he was joined by Mr. Justice Stone, said:

"The delegated power of legislation which has found expression in this code is not canalized within banks that keep it from overflowing. It is unconfined and vagrant."

The same is true in this bill.

"Here in the case before us, is an attempted delegation not confined to any single act nor to any class or group of acts identified or described by reference or a standard. Here in effect is a roving commission to inquire into evils and upon discovery of them correct them. * * * This is delegation running riot. No such plenitude of power is susceptible of transfer."

With these authoritative statements of law in mind, let us now examine the specific provisions of title VI to determine whether the required standards and criterion have been met.

Section 601, which purports to set forth the policy, provides: "Notwithstanding any inconsistent provision of any other law, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

What standards or criterion do we find here? The principal words appear to be "benefits," "discrimination," and "Federal financial assistance." Are they defined anywhere in this title? The answer is "No." What do we mean by "discrimination"? What do we mean by the term "on the ground

of race, color, or national origin"? Suppose a very pale, anemic-looking man applies for a position working on an interstate highway which is being constructed under the national highway program. What happens if the foreman or employing official looks at him and says, "You are too pale. I don't believe you have the strength to perform this type of labor." Can our anemic friend file a complaint with the Department of Commerce? Is this discrimination within the meaning of section 601?

Coming to the term "Federal financial assistance," just what does this mean? According to testimony of the Attorney General before the Committee on the Judiciary of the House of Representatives on a similar title, there are several hundred programs and activities involved. (Hearings on Civil Rights, October 15–16, 1963, serial No. 4, part IV, p. 2731.) Does anyone really know just what programs are intended to be covered here?

Replying to a request by Chairman CELLER, of the House Judiciary Committee, for a list of such programs, the Deputy Attorney General submitted a list which I shall insert in the RECORD at this point:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY
ATTORNEY GENERAL
Washington, D.C., December 2, 1963.

Congressman EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: This is in response to your request for a list of programs and activities which involve Federal financial assistance within the scope of title VI of the proposed civil rights bill, H.R. 7152.

For the reasons outlined below, it has been found to be impossible to compile any list which is accurately responsive to your request or satisfactorily representative of the amounts of Federal financial assistance which potentially could be affected by the provisions of title VI. The list attached should not, therefore, be taken at face value or used without an understanding of its limitations. Title VI, as set forth in Committee Print No. 2, dated October 30, 1963, provides in part:

"SEC. 601. Notwithstanding any inconsistent provision of any other law, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

"SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity by way of grant, contract, or loan, shall take action to effectuate the provisions of section 601 with respect to such program or activity."

Title VI would apply to programs and activities which receive Federal financial assistance, by way of grant, contract, or loan. I attach a list of appropriations, revolving funds, and trust funds, part or all of which may involve such Federal financial assistance. The list is keyed to line items in the 1964 budget, and is based on financial data furnished by the Bureau of the Budget. The following, however, were omitted: (1) New programs which, although listed in the budget, are not yet authorized and are the subject of proposed legislation and (2) programs which were in liquidation after fiscal year 1962. A program description for each item can be found in the appendix to the 1964 budget on the page indicated after the program title on the attached list.

The dollar figures in the table are the preliminary actual expenditures for the fiscal year 1963 as reported by the Treasury Department. In the case of revolving and trust funds, the expenditures shown are on a net basis except in the case of two trust funds indicated by footnotes in the attached table, which are shown on a gross expenditure basis in the Budget and Treasury reports. Minus figures indicate net revenues.

The following comments and observations are applicable to the attached table.

1. Activities wholly carried out by the United States with Federal funds, such as river and harbor improvements and other public works, defense installations, veterans' hospitals, mail service, etc., are not included in the list. Such activities, being wholly owned by, and operated by or for, the United States, cannot fairly be described as receiving Federal "assistance." While they may result in general economic benefit to neighboring communities, such benefit is not considered to be financial assistance to a program or activity within the meaning of title VI.[1]

For similar reasons, ordinary Government procurement is not considered to be subject to title VI. All such direct activities of the Federal Government are, of course, subject to the constitutional requirement of nondiscrimination embodied in the fifth amendment; in addition, contracting related to them is subject to the nondiscrimination requirements of Executive Order No. 10925 and would be subject to the authority conferred by section 711(b) of H.R. 7152.

2. A number of programs administered by Federal agencies involve direct payments to individuals possessing a certain status. Some such programs may involve compensation for services rendered, or for injuries sustained, such as military retirement pay and veterans' compensation for service-connected disability, and perhaps should not be described as assistance programs; others, such as veterans' pensions and old-age survivors, and disability benefits under title II of the Social Security Act, might be considered to involve financial assistance by way of grant. But to the extent that there is financial assistance in either type of program, the assistance is to an individual and not to a "program or activity" as required by title VI. In any event, title VI would not substantially affect such benefits, since these payments are presently made on a nondiscriminatory basis, and since discrimination in connection with them is precluded by the fifth amendment to the Constitution, even in the relatively few instances in which they are not wholly federally administered. Accordingly, such programs are omitted from the list. For similar reasons, programs involving direct Federal furnishing of services; such as medical care at federally owned hospitals, are omitted.

3. Programs of assistance to foreign countries, to persons abroad, and to unincorporated territories and possessions of the United States, are omitted, since the application of title VI is limited to persons in the United States. Programs of assistance to Indians are also omitted. Indians have a special status under the Constitution and treaties. Nothing in title VI is intended to change that status or to preclude special assistance to Indians. Programs which involve Federal payments to regular school districts which provide education to Indians as well as non-Indians have, however, been included since such programs can be regarded as a form of assistance to the school district.

4. The dollar amounts shown do not in each case afford a reliable indication of the magnitude of the assisted program or activity. In the number of cases, the total Federal expenditures for a given line item in the budget have been shown even though only a small portion or aspect of the program covered by that line item might involve financial assistance within the scope of title VI.[2] On the other hand, certain very large items which may involve relatively very small amounts of Federal financial assistance have been omitted to avoid undue distortion. Examples include: AEC, a small part of whose expenditures may have been spent on assistance payments to States, localities, and private entities; research and development activities related to national defense and other direct governmental functions, a small part of which involve grants, fellowships, and other assistance payments; and procurement, some part of which may possibly be considered to involve special assistance to contractors. Similarly, while programs involving donation of commodities, in kind, would appear to be within the scope of title VI, and such programs have been included in the attached list where clearly identifiable, no attempt has been made to identify, or place a dollar figure on, all programs involving donation of property, or disposition at less than fair value.

5. It should not be assumed that each program shown on the attached list will be significally affected by the enactment of title VI. Title VI expresses a general, across-the-board Government policy, which has potential impact on a great number and variety of programs. The attached list attempts to identify those programs which might potentially be affected, although some may have been overlooked. In fact, however, title VI is expected to have little practical impact on many of the programs listed, for the reason that they are now being administered in a manner which conforms with the policy declared by title VI. Indeed, explicit nondiscrimination policies have been adopted by executive action in recent years in many areas, including housing, airports, and employment on federally assisted construction, while other programs either do not present practical possibilities for discrimination, or have long been administered in ways which preclude discrimination.

The impact of title VI is further limited by the fact that it relates only to participation in, receipt of benefits of, or discrimination under, a federally assisted program. As to each assisted program or activity, therefore, title VI will require an identification of those persons whom Congress regarded as participants and beneficiaries, and in respect of whom the policy declared by title VI would apply. For example, the purpose of benefit payments to producers of agricultural commodities, under 7 U.S.C. 608, is to "establish and maintain * * * orderly marketing conditions for agricultural commodities in interstate commerce" (7 U.S.C. 602). The act is not concerned with farm employment. As applied to this Federal assistance program, title VI would preclude discrimination in connection with the eligibility of farmers to obtain benefit payments, but it would not affect the employment policies of a farmer receiving such payments.

The effect of title VI, on most of the programs shown on the attached list, will be to provide statutory support for action already being taken to preclude discrimination, to make certain that such action is continued in future years as a permanent part of our national policy, and to require each department and agency administering a program which

[1] Reclamation projects have, however, been included because they may include construction under contract of some facilities which will be operated and ultimately owned by non-Federal entities, and may to that extent be considered to involve a form of financial assistance to such entities.

[2] For example, the item listed as "forest protection and utilization" under the Department of Agriculture is shown at its total 1963 expenditure of $197,242,562 although only a small amount of that total is to be spent for State and local grants which come within the scope of title VI. Costs of administration have also been included except where they appear as a separate line item in the budget.

may involve Federal financial assistance to review its administration to make sure that adequate action has been taken to preclude discrimination and to take any action which may be shown to be necessary by such review.

In addition, title VI will override those provisions of existing Federal law which contemplate financial assistance to "separate but equal" facilities. Assistance to such facilities appears to be contemplated under the Hill-Burton Act (42 U.S.C. 291e(f)—hospital construction), the second Morrill Act (7 U.S.C. 323—land-grant colleges) and Public Law 815 (20 U.S.C. 636(b) (F)—school construction). The U.S. Court of Appeals of the Fourth Circuit has recently held the "separate but equal" provision of the Hill-Burton Act unconstitutional. *Simkins* v. *Moses Cone Memorial Hospital*, decided November 1, 1963. Title VI would override all such "separate but equal" provisions without the need for further litigation, and would give, to the Federal agencies administering laws which contain such provisions, a clear directive to take action to effectuate the provisions of title VI.

I regret that it is impossible to supply more meaningful dollar figures with respect to programs of assistance potentially affected by title VI. As indicated, the amounts set out in the accompanying chart are almost all total expenditure figures, rather than the considerably smaller portions thereof which could be affected by title VI. Of course, most of the programs of Federal assistance included on the list are already administered on a nondiscriminatory basis, and, thus, though within the literal scope of title VI and included on the list, would not be affected by enactment of the title. I particularly stress the regrettable, though unavoidable, difficulties inherent in the attached list in order to forestall any misunderstanding or distortion of its significance or meaning by either proponents or opponents of the legislation.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

Programs which may involve Federal financial assistance

	1963 expenditures
Executive Office of the President:	
Office of Emergency Planning: State and local preparedness (p. 52)	0
Funds appropriated to the President:	
Disaster relief: Disaster relief (p. 59)	$30, 802, 990
Expansion of defense production: Revolving fund, Defense Production Act (p. 60)	−56, 513, 274
Public works acceleration: Public works acceleration (p. 86)	61, 843, 808
Transitional grants to Alaska: Transitional grants to Alaska (p. 87)	3, 110, 295
Department of Agriculture:	
Cooperative State Experiment Station Service: Payments and expenses (p. 95)	37, 992, 460
Extension Service: Cooperative extension work, payments and expenses (p. 96)	74, 687, 584
Soil Conservation Service:	
Watershed protection (p. 100)	53, 092, 516
Flood prevention (p. 103)	26, 488, 410
Great Plains conservation program (p. 104)	9, 747, 075
Resource conservation and development (p. 105)	0
Agricultural Marketing Service:	
Payments to States and possessions (p. 113)	1, 432, 763
Special milk program (p. 113)	95, 369, 634
School lunch program (p. 114)	169, 597, 189
Removal of surplus agricultural commodities (p. 116)	131, 805, 115
Agricultural Stabilization and Conservation Service:	
Expenses, Agricultural Stabilization and Conservation Service (p. 122)	87, 415, 517
Sugar Act program (p. 125)	76, 929, 888
Agricultural conservation program (p. 125)	211, 194, 214
Land-use adjustment program (p. 127)	2, 000, 000
Emergency conservation measures (p. 127)	2, 701, 427
Conservation reserve program (p. 127)	304, 342, 305
Commodity Credit Corporation:	
Price support and related programs and special milk (p. 132)	3, 486, 356, 042
National Wool Act (p. 137)	69, 164, 861
Rural Electrification Administration: Loan authorizations (p. 148)	331, 656, 082
Farmers Home Administration:	
Rural housing grants and loans (p. 151)	184, 203, 524
Rural renewal (p. 153)	0
Direct loan account (p. 153)	58, 948, 965
Emergency credit revolving fund (p. 156)	7, 888, 613
Rural housing for the elderly revolving fund (p. 155)	0
Forest Service:	
Forest protection and utilization (p. 170)	197, 242, 562
Assistance to States for tree planting (p. 176)	1, 203, 697
Payments to Minnesota (Cook, Lake, and St. Louis Counties) from the national forests fund (p. 177)	125, 366
Payments to counties, national grasslands (p. 177)	393, 674
Payments to school funds, Arizona and New Mexico, act of June 10, 1910 (p. 177)	80, 462
Payments to States, national forests fund (p. 177)	27, 235, 140
Department of Commerce:	
Area Redevelopment Administration:	
Grants for public facilities (p. 188)	476, 848
Area redevelopment fund (p. 188)	−499, 532
Office of Trade Adjustment: Trade adjustment assistance (p. 202)	2, 820
Maritime Administration:	
Ship construction (p. 223)	107, 483, 152
Operating-differential subsidies (p. 224)	220, 676, 686
Maritime training (p. 227)	3, 297, 777
State marine schools (p. 227)	1, 420, 724
Bureau of Public Roads:	
Forest highways (p. 237)	38, 525, 999
Public lands highways (p. 239)	2, 128, 990
Control of outdoor advertising (p. 239)	0
Highway trust fund (p. 241)	[1] 3, 017, 268, 879
Department of Defense:	
Military personnel:	
National Guard personnel, Army (p. 253)	212, 109, 751
National Guard personnel, Air Force (p. 254)	45, 366, 036
Operation and maintenance:	
Operation and maintenance, Army National Guard (p. 267)	174, 059, 283
Operation and maintenance, Air National Guard (p. 268)	193, 258, 395
National Board for Promotion of Rifle Practice, Army (p. 269)	650, 368
Military construction:	
Military construction, Army National Guard (p. 306)	18, 383, 216
Military construction, Air National Guard (p. 306)	21, 912, 946
Civil defense:	
Operation and maintenance, civil defense (p. 313)	34, 457, 221
Research and development, shelter, and construction, civil defense (p. 314)	11, 810, 129
Civil functions: Payments to States, Flood Control Act of 1954 (p. 378)	1, 613, 757
Department of Health, Education, and Welfare:	
Office of Education:	
Promotion and further development of vocational education (p. 402)	34, 330, 192
Further endowment of colleges of agriculture and mechanic arts (p. 402)	11, 950, 000
Department of Health, Education, and Welfare—Continued	
Office of Education—Continued	
Grants for library services (p. 402)	$7, 256, 890
Payments to school districts (p. 402)	276, 910, 035
Assistance for school construction (p. 403)	66, 241, 942
Defense educational activities (p. 404)	198, 335, 518
Expansion of teaching in education of the mentally retarded (p. 406)	959, 631
Expansion of teaching in the education of the deaf (p. 406)	1, 382, 635
Cooperative research (p. 406)	5, 015, 385
Foreign language training and area studies (p. 407)	0
College of agriculture and mechanic arts (p. 408)	2, 550, 000
Promotion of vocational education, act of Feb. 23, 1917 (p. 409)	7, 144, 113
Office of Vocational Rehabilitation:	
Grants to States (p. 409)	70, 651, 560
Research and training (p. 410)	24, 145, 307
Public Health Service:	
Accident prevention (p. 415)	3, 679, 074
Chronic diseases and health of the aged (p. 416)	16, 303, 114
Communicable disease activities (p. 417)	10, 749, 235
Community health practice and research (p. 419)	23, 946, 767
Control of tuberculosis (p. 420)	6, 813, 635
Control of venereal diseases (p. 420)	7, 843, 535
Dental services and resources (p. 421)	2, 603, 482
Nursing services and resources (p. 422)	8, 373, 620
Hospital construction activities (p. 423)	187, 432, 190
George Washington University Hospital construction (p. 424)	0
Aid to medical education (p. 424)	0
Environmental health sciences (p. 425)	0
Air pollution (p. 425)	10, 100, 876
Milk, food, interstate and community sanitation (p. 426)	8, 723, 615
Occupational health (p. 427)	4, 059, 384
Radiological health (p. 428)	13, 466, 288
Water supply and water pollution control (p. 429)	22, 554, 121
Grants for waste treatment works construction (p. 430)	51, 738, 090
National Institutes of Health (pp. 435–444)	723, 597, 285
Social Security Administration:	
Grants to States for public assistance (p. 460)	2, 723, 677, 540
Training of public welfare personnel (p. 463)	0
Assistance for repatriated U.S. nationals (p. 464)	412, 044
Grants for maternal and child welfare (p. 465)	76, 057, 662
Cooperative research or demonstration projects in social security (p. 468)	952, 654
Assistance to refugees in the United States (p. 469)	52, 902, 237
American Printing House for the Blind: Education of the blind (p. 472)	718, 707
Gallaudet College: Salaries and expenses (p. 474)	1, 458, 615
Howard University:	
Salaries and expenses (p. 475)	8, 362, 261
Construction (p. 476)	2, 687, 024
Office of the Secretary:	
Juvenile delinquency and youth offenses (p. 480)	4, 473, 623
Educational television facilities	1, 818
Department of the Interior:	
Bureau of Land Management:	
Payments to Oklahoma (royalties) (p. 491)	6, 214
Payments to Coos and Douglas Counties, Oreg., from receipts, Coos Bay Wagon Road grant lands (p. 491)	697, 449
Payments to counties, Oregon and California grant lands (p. 491)	15, 400, 136
Payments to States (grazing fees) (p. 492)	917
Payments to States (proceeds of sales) (p. 492)	249, 328
Payments to States from grazing receipts, etc., public lands outside grazing districts (p. 492)	183, 632
Payments to States from grazing receipts, etc., public lands within grazing districts (p. 492)	200, 446
Payments to States from grazing receipts, etc., public lands within grazing districts, miscellaneous (p. 492)	3, 902
Payments to States from receipts under Mineral Leasing Act (p. 492)	47, 147, 555
Payments to counties, national grasslands (p. 492)	92, 255
Bureau of Indian Affairs:	
Education and welfare services (p. 493)	77, 723, 737
Menominee educational grants (p. 499)	396, 000
National Park Service: Payment for tax losses on land acquired for Grand Teton National Park (p. 511)	27, 287
Bureau of Mines: Drainage of anthracite mines (p. 524)	39, 801
Office of Minerals Exploration:	
Salaries and expenses (p. 528)	569, 202
Lead and zinc stabilization programs (p. 528)	1, 457, 023
Bureau of Commercial Fisheries:	
Construction of fishing vessels (p. 533)	543, 459
Payment to Alaska from Pribilof Islands fund (p. 536)	702, 852
Fisheries loan fund (p. 536)	−1, 387, 010
Bureau of Sport Fisheries and Wildlife:	
Federal aid in fish restoration and management (p. 542)	5, 768, 736
Federal aid in wildlife restoration (p. 542)	15, 530, 052
Payments to counties, national grasslands (p. 543)	−1, 970
Payments to counties from receipts under Migratory Bird Conservation Act (p. 543)	582, 467

See footnotes at end of table.

Programs which may involve Federal financial assistance—Continued

	1963 expenditures
Department ot the Interior—Continued	
Bureau of Reclamation:	
Construction and rehabilitation (p. 546)	$168,185,561
Loan program (p. 551)	14,486,977
Payments to States of Arizona and Nevada (p. 556)	600,000
Upper Colorado River storage project (p. 557)	106,298,150
Department of Labor:	
Office of Manpower, Automation, and Training:	
Manpower development and training activities (p. 600)	51,783,662
Area redevelopment activities: Salaries and expenses (p. 601)	6,676,622
Bureau of Employment Security:	
Unemployment compensation for Federal employees and ex-servicemen (p. 606)	152,858,563
Salaries and expenses, Mexican farm labor program (p. 607)	1,814,958
Farm labor supply revolving fund (p. 608)	1,179,036
Unemployment trust fund (p. 946)	[2] 3,815,629,499
Office of the Secretary: Trade adjustment activities (p. 619)	640
Department of State:	
Educational exchange:	
Mutual educational and cultural exchange activities (p. 649)	26,207,202
Center for Cultural and Technical Interchange Between East and West (p. 651)	7,344,731
Federal Aviation Agency: Grants-in-aid for airports (p. 700)	51,493,441
General Services Administration:	
Real property activities: Hospital facilities in the District of Columbia (p. 714)	74,877
Housing and Home Finance Agency:	
Office of the Administrator:	
Urban planning grants (p. 742)	12,388,967
Open-space land grants (p. 743)	265,014
Low-income housing demonstration programs (p. 744)	145,976
College housing loans (p. 745)	283,573,515
Public facility loans (p. 747)	30,047,779
Public works planning (p. 749)	5,864,028
Urban renewal fund (p. 752)	173,208,174
Housing for the elderly funds (p. 757)	18,856,257
Federal National Mortgage Association:	
Special assistance functions fund (p. 761)	−262,295,979
Federal National Mortgage Association secondary market operations (p. 956)	−720,621,211
Housing and Home Finance Agency—Continued	
Public Housing Administration: Low-rent public housing program fund (p. 773)	$178,867,436
Veterans' Administration: Direct loans to veterans and reserves (p. 803)	−86,178,301
Civil Aeronautics Board: Payments to air carriers (p. 818)	81,856,762
Farm Credit Administration:	
Short-term credit investment fund (p. 835)	13,310,000
Banks for cooperatives investment fund (p. 836)	−11,979,500
Federal Home Loan Bank Board: Federal Home Loan Bank Board revolving fund (p. 840)	−119,413
Federal Power Commission: Payments to States under Federal Power Act (p. 850)	58,453
National Capital Housing Authority: National Capital Housing Authority trust fund (p. 968)	−2,354,674
National Capital Planning Commission: Land acquisition, National Capital park, parkway, and playground system (p. 860)	1,295,588
National Science Foundation: Salaries and expenses (p. 864)	206,859,160
Small Business Administration:	
Trade adjustment loan assistance (p. 875)	0
Revolving fund (p. 876)	134,320,156
District of Columbia:	
Federal payment to District of Columbia (p. 913)	32,899,000
Loans to District of Columbia for capital outlay, general fund (p. 913)	0
Loans to District of Columbia for capital outlay, highway fund (p. 914)	7,500,000
Loans to District of Columbia for capital outlay, water fund (p. 914)	850,000
Loans to District of Columbia for capital outlay, sanitary sewage works fund (p. 914)	2,400,000
Federal contributions and loans to the metropolitan area sanitary sewage works fund (p. 915)	14,200,000
Repayable advances to District of Columbia general fund (p. 915)	7,000,000
Advances to stadium sinking fund, Armory Board (p. 915)	415,800

[1] This amount is on a checks-issued (gross) basis. Receipts (collections deposited) totaled $3,292,965,983 in fiscal year 1963.

[2] This amount is on a check-issued (gross) basis. Receipts (collections deposited) totaled $4,256,052,867 in fiscal year 1963.

In his letter of transmittal, Mr. Katzenbach noted that "for the reasons outlined below, it has been found to be impossible to compile any list which is accurately responsive to your request * * *. The list attached should not, therefore, be taken at face value or used without an understanding of its limitations."

Continuing, Mr. Katzenbach wrote, "Title VI would apply to programs and activities which receive Federal financial assistance, by way of grant, contract, or loan. I attach a list of appropriations, revolving funds, and trust funds, part or all of which may involve such Federal financial assistance." Note the word "may." He doesn't appear to know exactly what programs are involved any more than you or I or anyone else. Concerning one group of programs and activities, Mr. Katzenbach observes that "they cannot fairly be considered to be financial assistance to a program or activity within the meaning of title VI." What does he mean by that phrase? How do we know what interpretation will be placed upon this group of activities by an administrative officer?

Discussing another group of activities, Mr. Katzenbach writes: "A number of programs administered by Federal agencies involve direct payments to individuals possessing a certain status. Some such programs may involve compensation for services rendered, or for injuries sustained, such as military retirement pay and veterans' compensation for service-connected disability, and perhaps should not be described as assistance programs; others, such as veterans' pensions and old-age, survivors, and disability benefits under title II of the Social Security Act might be considered to involve financial assistance by way of grant. But to the extent that there is financial assistance in either type of program, the assistance is to an individual and not to a 'program or activity' as required by title VI. In any event, title VI would not substantially affect such benefits, since these payments are presently made on a nondiscriminatory basis, and since discrimination in connection with them is precluded by the fifth amendment to the Constitution, even in the relatively few instances in which they are not wholly federally administered. Accordingly, such programs are omitted from the list."

What does this mean? We are told that they may be involved, that they perhaps should not be described as assistance programs. Then we are told that they are omitted from the list.

Further along in his letter, the Deputy Attorney General states that "it should not be assumed that each program shown on the attached list will be significantly affected by the enactment of title VI. Title VI expresses a general, across-the-board Government policy, which has potential impact on a great number and variety of programs. The attached list attempts to identify those programs which might potentially be affected, although some may have been overlooked."

All that these statements tell us is that neither the Attorney General nor his deputy nor anyone else really knows what is meant by the term "Federal financial assistance" or what programs and activities are involved. That means untold litigation over a period of many years will be necessary to clarify and define what this title really means.

Section 602 vests in each Federal agency responsible for the administration of a Federal assistance or grant-in-aid program, the power to terminate or refuse to grant such assistance as to any recipient whenever there has been a finding of discrimination or a denial of benefits because of race, color, or national origin. This is a tremendous delegation of power, involving as it does some $10.6 billion worth of Federal programs. Yet, these departments and agencies are required to establish rules, regulations, and order of general applicability subject to Presidential approval, without really knowing what programs and activities are involved.

I submit that the chief characteristics of title VI is its uncertainty and the confusion and litigation it will generate. Clearly, this title fails to define the subject of delegation and to provide a recognizable standard or criterion as is required by the decisions of the Supreme Court of the United States. If this title is enacted, it might certainly be said, in the language of Chief Justice Hughes, in *Panama Refining Co.* v. *Ryan*, "The Congress left the matter to the President without standard or rule, to be dealt with as he pleased."

How appropriate, indeed, are Mr. Chief Justice Hughes' remarks in the Schechter case when he said "Section 3 of the Recovery Act is without precedent. It supplies no standards for any trade, industry, or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure."

How very much to the point are his observations that "section 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction and expansion described in section 1."

In his opinion in that case Chief Justice Hughes might well have been referring to title VI of the pending bill, for that title sets up no standards, aside from the general aims described in section 601. In fact, that portion of his opinion which I quoted from earlier is directly applicable: "In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered."

The remarks of Mr. Justice Cardozo, in his concurring opinion in the Schechter case, are also very much in point here. It will be recalled that he said, "The delegated power of legislation which has found expression in this code is not canalized within banks that keep it from overflowing. It is unconfined and vagrant." We need only substitute the words "title VI" for the words "this code" to fit this title perfectly. As a matter of fact, so apt were his words that it would appear that he had title VI of H.R. 7152 in mind, when he said, in the same case, "Here in the case before us, is an attempted delegation not confined to any single act nor to any class or group of acts identified or described by reference or a standard. Here in effect is a roving commission to inquire into evils and upon discovery of them correct them. This is delegation running riot. No such plenitude of power is susceptible of transfer."

How true with respect to title VI.

I now desire to call attention to the fact that there is no requirement in title VI for any hearing to be held by any Federal department or agency, even if we were able to identify them, prior to the exercise of its rulemaking power, unless the organic statute of that department or agency now requires such a hearing. Furthermore, there is no indication that any hearings held on the question of alleged discrimination are required to conform to the provisions of the Administrative Procedure Act of 1946, as amended.

Thus, as to the promulgation of rules, regulations, or orders of general applicability, required by section 602, there is nothing to prevent any department or agency from issu-

ing them without any kind of a hearing, if no provision now exists in its organic statute requiring such a hearing. The only limitation contained in title VI, with respect to the exercise of the rulemaking power, is Presidential approval prior to their becoming effective.

As to hearings on a complaint or allegation of discrimination, all that is required is that a hearing be held and findings be made. Again, I stress the provisions of the Administrative Procedure Act would not apply.

We come now to the provisions for judicial review. Section 603 provides that any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. The Department of Justice, on page 53 of its brief entitled "Proposed Civil Rights Act of 1964—H.R. 7152," dated February 1964, states that: "Some Federal assistance statutes contain express provision for judicial review of agency action disapproving applications for initial or continued assistance or terminating assistance. Under existing law, for example, review can be obtained in a U.S. court of appeals with respect to grants for hospital construction and construction of schools in federally impacted areas. To the extent such review procedures are available, they would be the exclusive means of judicial review."

Section 603 provides further that in the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved, including any State or political subdivision thereof and any agency of either, may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act.

Referring to this portion of section 603, the Justice Department's brief states (p. 53):

"In the case of assistance statutes which do not themselves contain review provisions, section 603 would operate to declare a right to judicial review of agency actions terminating or refusing to grant or continue assistance, upon a finding of failure to comply with a nondiscrimination requirement imposed pursuant to section 602."

It has long been well settled that, in reviewing the actions of departments and agencies, the courts apply what has come to be known as the doctrine of judicial deference. The late Chief Judge Vanderbilt, one of our leading authorities on constitutional and administrative law, a member of the Attorney General's Committee on Administrative Procedure and one of the principal authors of the Administrative Procedure Act, in his authoritative volume entitled, "The Doctrine of the Separation of Powers," (1953), stated (pp. 128–129): "The doctrine of judicial deference has been applied increasingly to the work of the administrative agencies. First the courts deferred to administrative findings of fact if there was 'substantial evidence' to support them, reviewing only questions of law. Then, although the construction of statutes is peculiarly a function of the courts, they deferred to the administrative construction of statutes—a concession not made, of course, to trial courts which, not having legislative, investigatory, and prosecuting functions, are obviously far more impartial and qualified than an administrative agency with such powers could humanly be to construe its own enabling acts or regulations."

The point is, that individuals and governmental bodies who seek judicial review of the determination of a department or agency, terminating or refusing to grant financial assistance, will not receive a de novo hearing under section 10 of the Administrative Procedure Act. All that the court will do is examine whatever record and findings have been compiled by the agency involved in order to determine whether the findings are supported by substantial evidence. This is quite different from a hearing before a trial court in which the measure of proof is the preponderance of the evidence.

An examination of the annotations in title 5 United States Code, section 1009 (section 10 of the Administrative Procedure Act), reveals large numbers of cases affirming this doctrine, decided by U.S. Circuit Courts of Appeal and U.S. District Courts, throughout the land. Typical of these holdings are *U.S. ex rel. Beck* v. *Neelly*, 202 F. 2d 221 (C.A., Ill., 1953), certiorari denied, 345 U.S. 997, in which the rule was stated that "Under this chapter, courts may not interfere with administrative determinations unless, upon the record, the proceedings were manifestly unfair, or substantial evidence to support the finding is lacking, or an error of law has been committed, or the evidence reflects manifest abuse of discretion."

Along the same lines are *Gooding* v. *Willard*, 209 F. 2d 913 (1954), where the U.S. Circuit Court of Appeals for the Second Circuit held, in 1954, that where, on the record considered as a whole, there is substantial evidence to support administrative findings of fact, such findings are to be accepted and given effect by the courts; and *Kraynak* v. *Fleming*, 188 F. Supp. 431 (D.C. Pa., 1960), where the court held that in an action for judicial review of a decision denying claims asserted under the Social Security Act, section 301 and the following of the title 42, the court was limited to ascertaining whether, on the record as a whole, there was substantial evidence to support the Secretary's findings, and, while the court was required to keep in mind that it was required to assume responsibility for the reasonableness and fairness of the decisions of Federal agencies, it could not substitute its inferences for those of the referee supported by substantial evidence.

Indicating that judicial deference to administrative agencies appears to be based on the theory that officials who hear and determine cases are experts, Chief Judge Vanderbilt continues with his discussion, stating, that "by such judicial deference the courts have narrowed the scope of judicial review of administrative action to issues of congressional power, of statutory authority, and the basic prerequisites of proof. It is difficult to find a logical justification for the distinction made by the courts between the full review accorded to the findings of fact and the conclusions of law of a chancellor experienced in the trial of equity cases and the limited review of the decision of an administrative expert. * * * The situation is, of course, far more dangerous if one is dealing with an ex officio expert or, worse yet, a political transient craving preference rather than a genuine expert," (op. cit., p. 131).

In proceedings under title VI, the department and agency officials who hold the hearings and make the findings and determinations will not even be experts in the technical questions of discrimination, in any sense of the term. These determinations would be made by bureaucrats in the first instance and political appointees in the last instance. Therefore, particularly to the point are Chief Judge Vanderbilt's observations that "anyone who has had any experience in the trial of cases, either at the bar or on the bench, realizes that generally there is more difficulty in ascertaining the facts of a case than the law. Perspective as to the facts is more difficult to obtain at the trial level even for the capable and conscientious judge or administrator than it is on review" (op. cit., p. 131).

In an address before the Federal Bar Association, quoted in the New York Times for February 13, 1931 (at p. 18), Chief Justice Hughes made the following statement which is particularly pertinent to the situation which confronts us should title VI become law: "The power of administrative bodies to make findings of fact which may be treated as conclusive, if there is evidence both ways, is a power of enormous consequence. An unscrupulous administrator might be tempted to say, 'Let me find the facts for the people of my country, and I care little who lays down the general principles'."

U.S. Circuit Judge Waller, in a specially concurring opinion in *National Labor Relations Board* v. *Robbins Tire and Rubber Co.*, 161 F. 2d 798, 804 (CCA 5th, 1947), made a strong attack upon the very basis of the substantial evidence rule, in which he asserted that the courts which cannot review both law and facts are denied "the judicial power" that has been conferred upon them under the Constitution: "Give a partisan examiner or board the right to fix the facts and the right to declare the law may well be but as 'sounding brass or a tinkling cymbal'. * * * If the judicial power is vested in the courts in all cases and controversies mentioned in section 2 of article III; if a review by a Federal court of the decision of a board is a case or a controversy; if the judicial power is the power to administer justice; and if in the administration of justice it is necessary first to know the truth, how can Congress constitutionally withhold from the courts on review the right to be satisfied as to facts?"

Once more, I desire to emphasize the fact that if title VI is enacted into law, the political figures who head every department and agency in our Government which administers any type of Federal assistance or grant program, will have virtually unlimited authority to promulgate rules, regulations, and orders of general applicability, with respect to these programs, without any congressional standards or criteria. Thereafter, they may freely make decisions and determinations based upon their own regulations and orders, terminating or refusing to grant assistance and aid which has been specifically authorized by Congress. In other words, they would be vested with the legislative authority which, under our Constitution, can only be exercised by Congress and by Congress alone. Thus the delegation of the legislative function as now provided in title 6 is clearly unconstitutional.

Furthermore, in most instances, the only judicial review available to persons who have been aggrieved by these procedures would be a limited type of review, involving primarily the question of whether the findings were substantiated by the evidence. Is this what the people of the Nation want? My answer to that is emphatically "No." And if they could really know what the consequences will be, I don't believe they would stand for it.

Now, I come to the basic subject matter upon which title VI would have an impact. I stated earlier that, if enacted in its present form title VI might well undermine and even destroy the vast system of programs by which the Federal Government has been providing financial aid and assistance to some 91,185 State and local governmental jurisdictions for more than 100 years.

I call attention further to the fact that estimates contained in the 1965 Federal budget reveal that during fiscal year 1965, these Federal assistance programs are expected to involve a total expenditure of $10.6 billion, as compared with $3.1 billion in 1955, only 10 years ago. Also, of the estimated amount of $10.6 billion for 1965, $10.2 billion or 96 percent of total expenditures will be devoted to grants-in-aid.

Although the total expenditure for fiscal year 1965 of an estimated $10.6 billion will amount to approximately 9 percent of estimated total Federal cash payments to the public, as a source of State and local revenue, Federal payments for fiscal year 1963

amounted to an average of 14 percent of all general revenues available to these jurisdictions. It must be recalled, however, that this figure of 14 percent is an average. There are great variations among the State and local units of government. Thus, in 1962, the range ran from 34 percent in Alaska to as little as 7.1 percent in New York.

The grants-in-aid programs of the Federal Government were characterized by the First Hoover Commission as "part of the warp and woof of present-day government." They have provided needed standards of public services throughout the country in many fields, involving, for the most part, services which the State and local government jurisdictions are unable to supply. It has also involved some redistribution of resources from States that have superior means to those that lack them. This system has had the added advantage of developing a division of responsibility in which the National Government provides financial aid and establishes broad standards, and the State governments share the fiscal burden, but maintain primary responsibility for administration. As a result, State governments have been able to add to their resources and to embark upon additional or more extensive public-service programs for their own people.

This great system of grants-in-aid, involving, as it does, hundreds of programs and activities, did not just happen. Every one of these programs involve an authorization and an appropriation from the Congress. Every one of the statutes which established these programs and authorized funds for their operation, and every one of the statutes which appropriated the necessary funds to enable them to function has been carefully and deliberately considered by the appropriate committees of the Congress and by Members of both Houses during floor debate on the measure. Thousands upon thousands of man-hours have been devoted to all of this legislative activity. Exercising its constitutional powers, the Congress, during the course of many years, has built up these programs carefully and painstakingly in order to meet the needs of the people of this Nation, which State and local governments in some instances lacked the financial resources to meet.

The areas covered by these activities range over virtually every aspect of life, from the womb to the tomb and from the cradle to the grave. They include education, health and hospitals, stabilization of farm prices and income, natural resources, area redevelopment, transportation, including highways and airports, and huge programs for public welfare, including public assistance, social security, etc.

Yet, we are seriously considering the enactment of a measure which would vest in departments and agencies of the Federal Government the authority to amend all of these programs by the addition of a so-called Powell amendment to every such program now in existence or hereafter to be established. Note also, if you will, that amendments of this type have been rejected by the Congress on numerous occasions in the course of consideration of various types of grants-in-aid and related legislation.

Now, we propose to transfer to Federal departments and agencies the authority to terminate these programs and activities, not based upon any standards or criterion established by the Congress, but based upon an attempted delegation of power which is patently unconstitutional on its face.

Because of the importance of these activities and programs to the economy and the well-being of the Nation, to the State and local governments and all of the American people, and because of the imminent proposed destruction of Federal assistance programs, it is my intention, at this time, to review the objectives, history and development of these programs, from their inception in 1789, to the present day.

History and Background of Federal Assistance Program

General

The strength of our Federal system is no greater than the strength and vitality of the many governments which compose it. Fiscal capacity is both an essential ingredient of this strength and one vital measure of it.

If State and local governments are to absorb additional functions or to take on an increasing share of emerging governmental responsibilities, the question arises whether they are financially able to carry the load. States, and more particularly local governments, are said to lack resources adequate for the discharge of the duties and responsibilities required of them. If it is impossible for them to satisfy the demands of their citizens for governmental services, traditional local self-reliance may be weakened and pressures may increase for Federal participation in services hitherto regarded as primarily State and local responsibilities. From the earliest days of the Republic, it was obvious that fiscal imbalances among levels of government would have to be reduced if the Federal form of government was to endure and if government as a whole was to be responsive to the people.

There are many obstacles in the way of expanding State and local revenue to enable these governmental levels to assume their proper responsibilities. There is not now and there never has been any single solution. From the beginning, it has been obvious that a combination of measures would be required to make possible a proper allocation of activities and to insure adequate financing of these activities.

Agitation for fiscal readjustment between the components of the Federal system is neither novel nor recent. It recurs with every significant expansion in governmental activity and, in one form or another, has been a continuing problem since the formation of the Republic. Of course, the problems that confronted earlier generations seem not too difficult in retrospect, but they loomed large to those who had to deal with them.

Governments existing by the will of the governed are destined to be confronted with fiscal problems, since free peoples seem to have both a large appetite for governmental services and an instinctive aversion to taxes. Finance was one of the central issues which delayed agreement by the Founding Fathers at Philadelphia. The problem in 1787 was how to insure the coexistence of two levels of fiscally autonomous governments—the National Government and the States. What was needed, in view of the financial defects of the Confederation, was greater fiscal strength in the National Government. Today, by way of contrast, the problem of revenue sources is less acute for the National Government than for the State and local governments. The National Government's chronic deficits are not due to inadequacy in tax resources. Those deficits are definitely attributable to waste, extravagance, imprudent spending, and a woeful lack of fiscal integrity of those of us who have governmental responsibilities in this field.

In a fundamental sense, there is one economy from which all governments in our Federal system derive their financial strength. The difficulty is how to divide the tax resources and expenditures among levels of government. The problem of preserving a fiscal balance among the governments comprising the Federal system arises because of the unequal distribution of tax resources. It is actually threefold: (1) some imbalance exists between the National Government, in tapping available resources; (2) there is an imbalance among States; the geographical distribution of resources is uneven and places some States in disadvantageous positions as compared with others; (3) further imbalances arise within individual States as a result of concentration of resources in certain areas.

One of the devices which has developed in attempting to meet the needs of the people which cannot be met by State and local governments is the Federal assistance and grant-in-aid program. It should be noted that the Federal Government has never set up a formalized system of grants-in-aid or subventions that has equalization as its controlling object. Grants have been established to accomplish specific purposes in which there are deemed to be important national interests. Ordinarily they are designed to provide only minimum levels of essential service. The States and localities are left free to provide higher levels of service through their own tax efforts. Proved State effort, generally evidenced by matching expenditures, is a sound condition of eligibility for Federal grants-in-aid. This approach does not preclude National Government aid without matching in costly emergencies which cannot be foreseen or planned for, such as unusually severe natural disasters or extreme economic distress.

In some grant-in-aid programs, especially in recent years, equalization has been made a limited secondary objective by the inclusion of equalizing factors in allotment formulas and matching requirements. Larger specific grants in relation to needs are given to the low-income than to the high-income States.

As a matter of fact, the $9.3 billion transferred by the National Government to States and localities in fiscal year 1963—and it is expected to total $10.4 billion in fiscal year 1964, and $10.6 billion in fiscal year 1965—tends to equalize the tax efforts of States and localities. For the Nation as a whole, State and local taxes would have had to be increased more than 14 percent to replace the revenues derived from Federal grants. For individual States, increases ranging from 6 to 34 percent would have been required.

Purpose and objective of grants-in-aid

The grant-in-aid device is used by central governments to assist smaller governmental units in practically all political systems, whether federal or unitary. Grants are found in a wide variety of forms. The common characteristics of all forms is that the central government provides aid without supplanting smaller units as the governments which bring the aided services to the public.

Grants made by the U.S. Government to the States are usually in the form of money, although the earliest grants, as I will show subsequently, were in land, and at the present time, grants of agricultural commodities are being made. Most grants-in-aid are continuing arrangements, although there have been a few one-time grants.

At first glance, existing Federal grant programs look like a hodgepodge. Purposes are not always clearly stated, the choice of activities seems haphazard, apportionment methods and control vary widely. Thus, in fact, the grants do not constitute a system, and never were intended to make up a system. Their varied characteristics are largely the natural outgrowth of their varied objectives and piecemeal development.

In summary, the National Government has used the grant-in-aid primarily to achieve some national objective, not merely to help States and local governments finance their activities. Specific objectives have been as varied as getting the farmer out of the mud, assisting the needy aged, providing lunches for schoolchildren, and preventing cancer. As a condition of financial assistance the National Government establishes and provides administrative supervision.

It appears that in recent years, the trend has been toward sharper definition of objectives, closer attention to conditions and requirements, more extensive administrative

supervision, and, recently, greater attention to relative State fiscal capacity.

As I have pointed out earlier in my remarks, title VI of this so-called civil rights bill would actually amend every existing and future Federal aid program. I also noted that these programs have evolved virtually since the birth of this Nation, in order to assist State and local governing bodies to meet the economic and social needs of their people which, with their limited resources, they were unable to do without assistance. It will be seen that the Congress, practically throughout its entire history, has devoted uncounted but obviously enormous amounts of time, in committee and on the floor of both Houses, to authorization and appropriations measures designed to aid the States and local governments. In recent times, numerous attempts have been made to add to these measures Powell amendments, authorizing cutoff of these funds in the event of any alleged discrimination. Each time, with the exception of a few education bills, these amendments were rejected. In the past few years alone, such amendments were rejected on six occasions, in connection with pending housing bills.

In order to present a full understanding of what these Federal aid programs mean to the people of this Nation and to State and local governments under which they live, it is my purpose, at this time, to review their history and development from the earliest times.

HISTORICAL DEVELOPMENT: EARLY FISCAL SITUATION

In the early 19th century, it became apparent that the National Government had financial resources in excess of its spending programs. The States had been spending freely on extensive internal improvements and were heavily in debt. From $13 million in 1820, State indebtedness had increased to over $174 million in 1837. Meanwhile, the National Government had paid off its own debts, and current revenues exceeded total expenditures each year.

Sectional opposition, bolstered by constitutional doubts, prevented the use of national income for internal improvements. Jackson vetoed Clay's bill of 1832 to distribute to the States for education or internal improvements the revenues from the public domain. In 1836, Congress agreed on an unconditional distribution among the States according to their national representation. Since Jackson opposed an outright gift of the money, the sums were declared to be deposits which the United States might recall if needed. In 1837, three quarterly distributions were made, totaling $28.1 million. A depression intervened and no further payments were made. Both National and State revenues dropped sharply, but by 1850, the National Government was running surpluses again. After the interruption of the Civil War, the Treasury had surpluses from 1866 to 1893, with the exception of 1874. What a contrast with the present. Very few national expenditures followed: pensions, public buildings, and river and harbor improvements were principal items.

THE GRANTS-IN-AID SYSTEM—1789–1913

The National Government's grant-in-aid system appeared first in the land grants of 1785 and the Northwest Ordinance of 1787, by which the Congress of the Confederation dedicated a section of every township in the Federal domain for the maintenance of public schools. In succeeding periods, grants-in-aid began to cover various aspects and segments of American life, starting with the public domain and continuing on with education, agriculture, internal improvements, forestry, welfare, militia, highways, vocational education and rehabilitation, public health, social security, etc. Following 1789, the earliest grants were justified either by specific clauses in the Constitution or by the power of the Congress to dispose of the national domain for the common benefit.

PUBLIC DOMAIN

An examination of the grants to the States in those early days reveals that the prevailing policy of the National Government was to make the States the principal direct beneficiaries of the sale or exploitation of public lands. As time went on, the proceeds of the national domain were used for a variety of purposes. The earliest land grant, under the Northwest Ordinance, was earmarked for a broad purpose of welfare—free public education. Later, grants to subsidize the construction of roads, canals, and railroads shot ahead of all other types in their influence on national development. Still later, the withdrawal of millions of acres from the disposable public domain, on conservation principles, put a brake on the entire land-grant procedure.

An examination of the grants to the States, in terms of the fiscal pattern which they established, reveals one development which is especially important: the land grant tended to become a cash grant based on the land's disposable value, and the cash grant tended to become an annual grant based on national tax powers.

EDUCATION

As previously indicated, the 1785 land grant for schools, reaffirmed in the Northwest Ordinance of 1787, was the first use of national funds to encourage the States to follow a national policy. In the years that followed, the pattern was applied again and again. Although grants to Ohio (1802) and four other States, put the lands directly into the hands of the townships, later grants were made to the governments of the States. In 1848, the grant was increased to two sections per township, and 14 States entered the Union with this more generous endowment. According to the latest available statistics, the total count of lands distributed by the National Government for common school purposes is in excess of 130 million acres.

The same pattern was applied to public education at progressively higher levels. Beginning in 1787, Congress provided two townships in each State as an endowment for institutions of higher learning. Such grants ranged from 160,000 to 800,000 acres. More than 2.6 million acres went for universities, and 1.36 million acres for State normal schools. Then, in 1818, Congress added to its endowment of State schools by providing that 5 percent of the proceeds of the sale of remaining national lands within the State should flow into the State treasury. Much, though not all, of this revenue was expended for educational purposes.

The precedent of coupling public domain with educational policy was substantially extended in 1862. Representative Morrill, of Vermont, in 1857, introduced a bill donating land to each State for the "endowment, support, and maintenance of at least one college where the leading subject shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to the agriculture and the mechanic arts." Both Houses passed the bill, though barely, but President Buchanan, after declaring it an unconstitutional disposition of public lands, vetoed it. Morrill finally pushed the bill through in 1862. It granted each existing State and future State a basic endowment of 60,000 acres and 30,000 acres additional for each of its congressional representatives. If short of national land within their own borders, States were given Federal land scrip with which to claim public domain in other parts of the country. These funds could not be used for construction, which had to be provided by each State itself; the principal had to be invested in approved securities and left untouched; and the expenditures had to be reported annually to Congress.

Agriculture

Congress extended and deepened the Morrill Act design in following years. The second Morrill Act of 1890 provided an annual cash grant raising to $25,000 per State wherever national requirements were met, and the Nelson amendment of 1907 not only doubled the grant but extended the purposes for which it might be used. Congress kept in mind its experience with the first Morrill Act when it made the National Government a patron of agricultural research. The Hatch Act of 1887 authorized $15,000 a year in land-sale proceeds for the establishment of State agricultural experiment stations at agricultural colleges. The Central Government specified annual fiscal reports and, beginning in 1895, imposed a national audit on expenditures. The Adams Act of 1906 doubled these allotments. Congress followed more or less the same lines in 1911 when the Marine School Act offered to States that would match it a grant of $25,000 for schools of seamanship.

Internal improvements

The history of the national subsidy of State, local, and private enterprise in internal improvements is complex. In the first place, the term "internal improvements" has not always constituted a clear classification. Widely different enterprises were included under this category at different times in the 19th century. In the second place, a good many of the land grants used for canals and other expenditures were originally given to the States for the quite different purpose of flood control and drainage. The effects of internal-improvement subsidies on State governments were debated vociferously and from a variety of viewpoints throughout the whole of the 19th century.

These debates, however, did not prevent action. The National Government, in the days of wagons, gave away 3.25 million acres for the support of wagon roads. When canal building boomed, it gave 4.5 million acres for this purpose in Illinois, Indiana, Michigan, Ohio, and Wisconsin; and 2.25 million acres to Alabama, Iowa, and Wisconsin to improve river navigation. It gave about 64 million acres to the States for flood control and to drain marshy lands. With the advent of the railroads, it gave grants for railroad construction. For many reasons, the National Government finally decided to subsidize the railroads directly.

The roster of statesmen of 1800 and 1850 who viewed these grants with alarm is studded with eminent names. Madison, in the early 1800's, avowed that the National Government was debarred from the field of internal improvements by nothing less than "a defect of constitutional authority." He promptly vetoed the bonus bill of 1817, which made provisions for internal improvements. Both Monroe and Jackson vetoed bills providing national funds for local roads. Jackson, in 1832, vetoed Henry Clay's bill to distribute land-sale proceeds to the States as endowments for both internal improvements and education. Other opponents of specific-purpose grants were Polk, Pierce, and Buchanan. This tradition of alarms and vetoes was renewed in the debate over the creation of the Department of the Interior in 1849. Until that year, the Secretary of State administered those few domestic affairs the National Government had in hand. Argument for the Department of the Interior bill, based on the claim that it would promote efficiency in administration, was countered by the prediction that it would increase national patronage and power at the expense of the States. President Polk remarked as he signed the bill: "I fear its consolidating tendency."

Forestry

National forestry legislation, aimed at enforcement of forest protection, gave the National Government considerable powers over

State administration. The President, in 1891, acted under his power to create forest preserves and set aside millions of acres of the public domain. Western discontent with the act led to the practice of rebating a portion of the revenues from 10 percent, in 1906 to 25 percent of total receipts, in 1908, were earmarked for education and roads.

In 1911, Congress enacted the Weeks Act, which authorized the Secretary of Agriculture "to cooperate with any State or group of States, when requested to do so, in the protection from fire of the forested watersheds of navigable streams." This enactment was legislative news. It not only made Federal aid conditional upon advance approval of State plans for forest guardianship, but also provided Federal inspection of State procedure. Whereas previous grants-in-aid were embodied in directives of a general nature, the States were now subjected to national scrutiny intended to be both continuing and particularized.

The Weeks Act, besides requiring State matching, also described in some detail how the State as well as the national contribution should be overseen by national officers. The full machinery of the Weeks Act was not promptly and fully applied; and its operations did not run into big figures. Total national payments did not exceed $100,000 a year until after 1920, and the national grants were often paid in salaries to national patrolmen who held State commissions.

Welfare

Throughout the 19th century, there was little fear of a "consolidating tendency" in the field of welfare, since there was hardly any national tendency to deal with welfare problems at all. Indiana, in 1830, called upon Congress to open its purse to "minister consolation to all whom casualty or misadventure may render dependent upon benevolent protection." Four years later, Indiana asked for the construction of national hospitals within the State, with Ohio River boatmen as likely patients. Other States brought similar projects to the attention of Congress, and, by 1861, 24 marine hospitals were built, many of them on navigable lakes and rivers.

However, almost until the end of the 19th century, America appears to have held the opinion that a citizen's ill health or incapacity was not the concern of Congress. When Congress, in 1854, proposed to grant public lands to the States for the benefit of the insane, President Pierce vetoed the measure. He feared that "the dignity of the States shall bow to the dictation of Congress by conforming their legislation thereto," and that this, in terms of State powers, would be "the beginning of the end." Not until 1879, was the next cautious step taken by Congress. The Education for the Blind Act provided funds to the American Printing House for the Blind. This was apparently the first act to establish the principle of allotment according to need: the $10,000 worth of books and equipment produced under the grant each year was distributed to the States according to the number of blind pupils enrolled in the public institutions of each State.

In 1888, Congress voted an annual appropriation of $25,000 for the care of disabled soldiers and sailors in the State soldiers' homes, at the rate of $100 per inmate per annum. An amendment the following year took the memorable step of requiring the States to match Federal funds as a condition for receiving them.

Only after the commencement of the new century did the national interest in local health take a new turn. A statute in 1902 is indicative. It authorized the Surgeon General of the United States to call meetings of National and State officials and to furnish assistance to State officials.

Militia

National assistance to the National Guard began in 1808, when Congress granted an annual sum of $200,000 to the States to arm and equip their militia. Congress imposed no conditions of supervision. Many citizens criticized the manner in which the States spent the money, but it was not until 1886 that Congress attached to its increased grant of funds ($400,000) the condition that each State must provide 100 militiamen for each Senator and Representative. Congress increased the funds in 1901, 1906, and 1908, until the appropriation reached $4 million. The Dick Act of 1903 provided for the standardization of arms and equipment from Federal stocks and paid the National Guard from national funds during military exercises. It also authorized inspection of State performance. However, while the National Government could advise, make regulations, and threaten to withhold pay, the State governments retained administration and command.

SUMMARY OF GRANTS-IN-AID SYSTEM, 1789–1913

In summary, the beginnings of Federal aid can be traced back to preconstitutional days to the ordinance of 1785 and the Northwest Ordinance of 1787. A form of money grant appeared in 1836 when the cash surplus in the United Treasury was apportioned as loans to the States but without expectation or repayment. With the passage of the Merrill Act of 1862, to assist the States in establishing and maintaining land-grant colleges, the grant took on new characteristics. The objectives of the grant were carefully spelled out, conditions were placed on the use of the revenue dervied from the sale of granted lands, and annual reports were required. An annual grant was introduced in 1879 to provide educational materials for the blind, and in 1887, the first annual money grant was authorized to help the States establish agricultural experimental stations. The Weeks Act of 1911 authorized cooperation between the National Government and the States with respect to forest fire protection.

For the most part, these early statutes contained apportionment formulas, various provisions for matching national funds with State funds, and gradually, a requirement for advance approval of State plans by the National Government. It is interesting to note that an examination of the historical development of the grant reveals changes in attitudes toward the administration of the grants as well as changes in the source, size, and functions of the grant funds. Thus, in the early years, the grants were largesse—primarily in the form of land, cash based on land sales, and Treasury surpluses—from the National Government to the States. The National Government, at first, attached general, simple, and generous conditions to those early grants, sometimes designating the broad purposes for which they were to be used, but left the States almost complete freedom in disposing of their proceeds. Beginning with the first Morrill Act, however, Congress took care to write into the grant enactments an increasing number of administrative prescriptions. These prescriptions assumed and encouraged cooperation between the National Government and the State Governments. The total effect of the growth pattern of the grants was to provide a new and important field of collaboration.

THE GRANT-IN-AID SYSTEM, 1914–46

General

The passage of the Smith-Lever Act in 1914 is usually regarded at the beginning of the modern grant period. This program, providing for cooperative agricultural extension work, introduced such new features as an apportionment formula, equal to State matching of the Federal grant, and advance Federal approval of State plans. Similar conditions were attached to the much larger highway program established 2 years later. It should be noted that the Smith-Lever Act, establishing the Agricultural Extension System in 1914, represented an initial cash grant of unprecedented size from the National Government to establish a continuing State-aid program. The act itself climaxed a widely supported movement to strengthen farming. The county agent program, previously dependent upon private and local funds and on small sums of money from the Department of Agriculture, now received an initial amount of $480,000. These funds, to be matched by the States dollar for dollar, ballooned to $4.2 million in 7 years. By 1916, the total program of cooperative agricultural extension work was using $1.1 million of Smith-Lever money, matched by an additional $597,924 from the States. To these funds were added $1.1 million from the Department of Agriculture, $873,000 from State and college funds, $973,000 from county funds, and $277,000 from philanthropic and other funds.

These large expenditures, the importance of the program, and the many groups involved in it all focused national attention on the system of conditional grants. Once accepted as a useful combination of national money with local needs, in a program of national, social and economic interests, the grant device was ready for further evolution. Public opinion and official thinking seized upon it as a basis for new social and economic programs.

Following the Smith-Lever Act, a number of influential programs developed. The Federal-Aid Road Act of 1916, the Smith-Hughes Act of 1917, the Chamberlain-Kahn Act of 1918, the Sheppard-Towner Act of 1921, and the Wagner-Peyser Act of 1933 were capped by a series of programs contained in the Social Security Act of 1935—old-age assistance, aid to dependent children, aid to the blind, unemployment compensation, and several of lesser importance. The last two programs were among a dozen or more new grant programs, all of which, with the exception of fish and wildlife restoration and management grants, initiated in 1937, were directed toward social welfare, health, unemployment or agricultural relief. The principal new grant programs which were established between 1914 and 1946 are summarized below:

New agricultural programs

The concentration of public attention on the grant-in-aid device following the enactment of the Smith-Lever Act of 1914 soon brought new programs into being. The Smith-Lever Act was extended in 1928 by the Capper-Ketcham Act, which authorized another $1.5 million annually for agricultural extension work, and by the Bankhead-Jones Act of 1935, which appropriated $12 million annually on a nonmatching, farm-population basis.

In the allied field of agricultural experiment stations, the Purnell Act of 1925 increased the grants for each State to $90,000, without a matching requirement, and 10 years later, the Bankhead-Jones Act added $3 million on a rural-population, equal-matching basis. In 1946, the scope of research was broadened and a gradual increase in grants was authorized.

Highways

Stimulated by the examples of grants in the fields of education, agriculture, and forestry, and pressed by the need for better roads to handle increased automobile traffic, many private groups and States turned to the National Government for highway aid. In the Federal-Aid Road Act of 1916, Congress authorized an annual appropriation of $5 million for construction of new postal route roads and improvement of old ones. The funds were to increase gradually to $25 million per year, and equal contributions from the States were required.

In this enactment, a three-way formula was adopted for allocating the money: the factors were population, area and rural delivery, including star route mileage. The conditions were exacting: advance approval of projects by Federal engineers, maintenance of State highway departments, and continuing national supervision of the work. A thorough revision of the act occurred in 1921, and national controls were tightened. By 1925, the annual authorization for highway grants had reached $75 million.

The depression years saw great outpouring of national money into State highway programs, much of it unmatched. Construction of intercity highways and elimination of grade crossings were temporarily approved under emergency programs and were provided for in the Federal Highway Act of 1944. National funds for highways amounted to $50 million in 1947.

Vocational education and rehabilitation

The Smith-Hughes Act of 1917 extended grants into the area of vocational education in agriculture, industry, and home economics. A sum of $1.6 million was initially provided, but the amount increased by stages to more than $7 million annually. Apportionment among the three divisions of the program was calculated on rural, urban, and total population. Small increases were granted and minor changes made in 1929 and 1934. In 1936, the George-Deen Act raised the annual sum to about $22 million and incorporated a new field of aid to education in so-called distributive occupations. Ten years later the 79th Congress raised the total annual authorization to $30 million.

Meanwhile, beginning in 1920, $1 million a year was allocated to the vocational rehabilitation and training of victims of industrial accidents. The Social Security Act of 1935 doubled this amount, and an amendment to the same act in 1939 increased it to $3.5 million. After 1943, under an indefinite nonlimited authorization, expenditures increased again, reaching about $11 million in 1946.

Public health

The Chamberlain-Kahn Act of 1918 for the control of venereal disease introduced national grants to the field of public health. Within a few years the program dwindled and died. In 1921 grants to the States for maternal and child health programs were begun under the Sheppard-Towner Act and continued until 1929. Both programs were resumed in the Social Security Act of 1935, with the addition of grants for general public health work and, later, for tuberculosis control. At the conclusion of World War II, Congress passed the Hospital Survey and Construction Act, authorizing $378 million for a 5-year program of grants to aid in the building of public and private, nonprofit health centers.

Social security

The peak of the grant movement came with the adoption of the Social Security Act of 1935. Besides providing for the renewal of maternity welfare and public health grants, it established major programs of old-age assistance, aid for dependent children, aid to the blind, unemployment compensation, employment offices, child welfare, and services to crippled children. Except for the contributory old-age annuity plan, administered directly by the National Government, all the programs were organized in contributory grant form under joint National-State administration.

These programs almost immediately doubled the sum of all grants-in-aid.

Titles III and IX of the Social Security Act, taking a leaf from national experience with the estate tax offset plan of 1926, set up a system similar to it for unemployment compensation. A national tax of 3 percent was levied on the payrolls of employers. The States, by enacting their own unemployment compensation laws with a comparable tax, might offset and recapture the national tax to a limit of 90 percent of the tax dollars involved and use these sums for their State systems. Revenues from the portion of the tax retained by the National Treasury were not earmarked, but Congress was to appropriate amounts deemed necessary by it for the administration of unemployment compensation programs.

Additional grant programs authorized $3.9 million (increased in 1947 to $7.5 million) per year for medical and other services for crippled children, and $1.5 million (increased in 1947 to $3.5 million) per year for services on behalf of homeless, dependent, and neglected children.

Employment offices

National grants for publicly operated employment offices were authorized in 1933 with an initial appropriation of $1.5 million, which rose to $4 million for each of the succeeding 4 years. The distribution to the States was based on population, with a matching requirement. During the war years the employment offices were operated solely by the National Government, but in 1946 Congress directed their reversion to the former National-State system. In contrast to most grant programs, matching was no longer required in the 1946 act, and the amount of the grant was to be determined by the so-called size of problem in each State.

School lunch program

Thirteen years after the first emergency grant to the States for the encouragement of school lunch programs, Congress in 1946 gave the program a formal and continuing status. The grant varies with the need of the States and is apportioned among the States according to school-age populations and State per capita incomes. National matching was scheduled to decrease from 1 to 1 to 1 to 3 in 1955.

Airports

Many airports were constructed during the depression with national relief funds, and during World War II others were built by the States with national funds as defense landing areas. In 1946 a regular airport construction program was voted, $500 million was authorized over a 7-year period, and the spending procedures were set up in grant form. Apportionment was to be 25 percent at the discretion of the Administrator and 75 percent by population and area. Dollar-for-dollar matching was required.

A departure from the policy established in most of the previous large-scale grant programs was legislated into the Federal Airport Act: the location of airports and the selection of individual projects eligible to receive national aid were left to the determination of the national Administrator. Municipalities and other political subdivisions were allowed to deal directly with the Civil Aeronautics Administration without channeling through their State governments and the States were prevented from obtaining a general grant to carry out a total program. The CAA, however, was forbidden to negotiate solely with localities whenever prohibited from doing so by State law. A majority of States enacted statutes requiring that their localities undertake airport projects only in conjunction with State authorities.

The National Guard

The National Defense Act of 1916 reflected the crisis in Europe and the strong sentiment in the United States for nationalizing the National Guard completely. The act tightened central controls and made refusal to comply with its stringent requirements for withdrawal of national benefits. An act of 1920 established the Militia Bureau in the War Department and authorized a policy committee composed of War Department and National Guard officers. In 1933 the National Guard became a component of the Army of the United States, and all guardsmen, by that fact, became members of the National as well as State forces. By 1939 the national contribution to the upkeep of the National Guard was four times the amount spent by the States. After World War II the Army began to build up the guard to three times its prewar strength and to keep it in constant readiness for national duty.

THE GRANT-IN-AID SYSTEM, 1946–64

Between 1946 and 1964, some 54 new grant-in-aid programs have been established by the Congress. Among these have been programs dealing with major disaster relief, cancer control, heart disease control, slum clearance and urban renewal, civil defense, aid to permanently and totally disabled, school construction in federally affected areas, school operations and maintenance in federally affected areas, flood prevention and watershed protection, special milk program, urban planning waste treatment facilities, environmental health activities, library services, defense educational activities, education of the mentally retarded, and medical assistance for the aged. A few of these were enlargements of existing programs.

In the 87th Congress, Congress established 8 new programs; and in the 1st session of the 88th Congress, 10 additional grant programs were established, dealing with college aid, vocational education, medical schools, mental health retardation, air pollution, manpower retraining, agricultural experiment stations, outdoor recreation and library services and construction.

In order to present some idea of the scope and magnitude of the Federal grant-in-aid programs now in effect, a summary of 34 major grant programs, together with tabulations of all grants-in-aid during the period between 1902–62, is set forth at this point. It should be noted, that in some instances, the material may duplicate earlier summaries. However, an attempt has been made here to indicate legislative action through 1960.

APPENDIX A—EXISTING PROGRAMS OF FEDERAL GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS [1]

AID TO STATE SOLDIERS' HOMES

An act of 1888, as amended, authorizes payment to the States of $700 a year, or one-half of the per capita cost of maintenance if this amount is less than $700, for each veteran cared for in a State soldiers' home who is eligible for hospital treatment or domiciliary care by the Veterans' Administration.

AGRICULTURAL EXTENSION WORK

The Smith-Lever Act of 1914 authorized the establishment of cooperative agricultural extension work, and supplementary acts have provided additional appropriations and broadened the original benefits. Cooperative extension work is intended to provide instruction and practical demonstration in agriculture, home economics, and related subjects to persons not attending or resident in the land-grant colleges. The program is administered by the U.S. Department of Agriculture's Federal Extension Service and conducted by the State extension services (affiliated with the land-grant colleges). Funds are used largely for the employment of county extension agents who work with rural families, marketing concerns, and others. Grants are allotted annually to the States, principally on the basis of farm and rural population and to a limited extent on the basis of special problems and needs. Federal

[1] For the most part these descriptions have been taken from the Report of the House Committee on Government Operations entitled "Federal-State-Local Relations," August 1958.

payments must be matched by funds from within the State.

AGRICULTURAL MARKETING SERVICE

Under the Agricultural Marketing Act of 1946, grants are made to the States for facilitating projects to improve the marketing and distribution of agricultural products. These grants, which must be matched by equal amounts of State money, are allotted on an individual project basis rather than by formula. Complete discretion rests with the Secretary of Agriculture in determining which projects proposed by the States are to receive Federal assistance.

AGRICULTURAL RESEARCH

A number of Federal statutes, beginning with the Hatch Act of 1887, authorize Federal grants for the purpose of aiding scientific investigation and experiment with respect to the principles and applications of agricultural science, and for disseminating the results of such researches. Agricultural science has been broadly defined to include economic and sociological research for the improvement of rural life. Federal grants are made to the State agricultural experiment stations, all but two of which are under the governing boards of the land-grant colleges and universities. Federal funds are allotted partly in equal amounts to each State, partly in relation to rural and farm population, and partly for participation in cooperative regional research. Certain portions of the grant must be matched by State funds. Currently the States are contributing on the average about $3 for each $1 of Federal grants received. The program is administered by the Department of Agriculture.

AIRPORT CONSTRUCTION

The program of Federal aid to airports was initiated by the Federal Airport Act of 1946 to establish, in conformity with the national airport plan, a nationwide system of public airports adequate to meet the present and future needs of civil aviation. The national airport plan is an annually revised statement of required airport development and construction projects. Only projects sponsored by public agencies and included in the plan are eligible for Federal grants. The Federal appropriation is apportioned among the States 75 percent on the basis of population and land area and the remaining 25 percent at the discretion of the Civil Aeronautics Administrator. The program is administered by the Federal Aviation Agency.

ASSISTANCE TO STATE MARINE SCHOOLS

Annual grants are made to New York, Massachusetts, Maine, and California to assist these States in maintaining academies for training officers to serve in the American merchant marine. In addition to administering financial aid, the Maritime Administration in the Department of Commerce is authorized to furnish and repair suitable training vessels and to pay certain maintenance allowances and fees for students.

CHILD WELFARE SERVICES

This program, established by the Social Security Act of 1935, is intended to assist the State public welfare agencies in establishing, extending, and strengthening, especially in predominantly rural areas, public welfare service for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent. The program also provides services for the return of runaway children. Each State receives a uniform grant plus a share of the remaining appropriation determined on the basis of the State's rural population under 18 years. Although Federal grants under this program are not required to be matched, the Federal funds are intended to cover only a part of the total cost of child welfare services in the States. The program is administered by the Children's Bureau in the Department of Health, Education, and Welfare.

CIVIL DEFENSE CONTRIBUTIONS

The Federal Civil Defense Act of 1950, as amended, authorizes financial contributions to the States for civil defense purposes on the basis of programs and projects approved by the Federal Civil Defense Administrator. Objectives of the Federal contributions program are to assist the States and their political subdivisions in acquiring essential civil defense materials and equipment and to assist them in the training of civil defense workers. Contributions have been made for equipment and training in the fields of warning, communications, engineering, evacuation, fire control, health, police services, public information and education, and rescue and welfare service. Federal contributions are made to the States on the basis of individual project applications and must be matched on a 50–50 basis.

CRIPPLED CHILDREN'S SERVICES

This program, established by the Social Security Act of 1935, is intended to assist the States to extend and improve (especially in rural areas and areas suffering from severe economic distress) services for locating crippled children and for providing medical, surgical, corrective, and other services and care, as well as facilities for diagnosis, hospitalization, and aftercare, for children who are crippled or who are suffering from conditions which lead to crippling. The definition of a crippling condition is determined by each State; within that definition the State agency indicates the types of conditions it accepts for care. The Federal appropriation is equally divided into two funds. Fund A is apportioned by equal grants to each State, and the remainder prorated according to the number of children under 21 years of age. Twenty-five percent of fund B is reserved for special projects, while the remainder is apportioned according to the financial need of each State for assistance in carrying out its approved plan. Fund A grants must be matched dollar for dollar. The program is administered by the Children's Bureau in the Department of Health, Education, and Welfare.

DEFENSE EDUCATIONAL ACTIVITIES

The National Defense Education Act of 1958 authorized a number of programs of Federal financial assistance to education—both at the elementary and secondary level and for higher education—designed to meet critical national needs, especially in the areas of science, technology, and foreign languages. The act also added certain technician classifications to the coverage of the vocational education grant program, elsewhere described.

The act authorizes grants to States for (a) the purchase of equipment and improvement of State supervision to strengthen elementary and secondary school instruction in science, mathematics, and foreign languages; (b) the initiation and conduct of programs to strengthen guidance, counseling, and testing in secondary schools; and (c) the improvement of statistical services of State educational agencies. In addition to grants in aid to States, direct loans to college students and private schools, fellowships for graduate students and grants and contracts with private institutions of higher education are also authorized. For certain of the programs under the act, allotments to the States take into account factors of school age, population and per capita income, and currently, States must match on a 50–50 basis.

DISTRIBUTION OF EDUCATIONAL MATERIALS FOR THE BLIND

Federal support for the manufacture and distribution of books and teaching materials for the education of the blind was instituted in 1879. Until 1956 these materials were available only to students enrolled in special public school classes for the blind; under the recent amendment all blind children attending public schools are eligible to receive these aids. The American Printing House for the Blind, a private nonprofit corporation, operates the program under the supervision of the Department of Health, Education, and Welfare. Funds are credited to public schools for the blind and to State departments of education in proportion to the number of blind students registered in the public schools; books and materials are shipped by the printing house in the amount of the funds credited. Matching of Federal funds is not required.

DONATION OF SURPLUS AGRICULTURAL COMMODITIES

Beginning with the various agricultural assistance and emergency relief acts in 1933, the program for donation of Government-owned surplus foods to eligible outlets has been primarily a byproduct of programs to stabilize agricultural prices by price-support and surplus-removal operations. Under this program the Department of Agriculture provides State agencies with surplus foods for distribution to the nonprofit school-lunch program and to needy persons in charitable institutions and family units. Distribution of Government-acquired surplus foods to schools, charitable institutions, and needy families is carried out under agreements with State agencies which act as distributing agents for the Department of Agriculture. The Federal Government assumes the cost of any necessary processing and of transporting commodities to central receiving points within the States. State agencies then arrange for all phases of intrastate distribution.

EMPLOYMENT SERVICE AND UNEMPLOYMENT COMPENSATION ADMINISTRATION

The employment security system is comprised of the separate but related activities of unemployment compensation and employment services. Federal grants to the States for the support of public employment offices were introduced by the Wagner-Peyser Act of 1933. Under the Social Security Act of 1935, the States were encouraged by the enactment of a tax credit plan to establish unemployment compensation programs conforming to certain broad Federal standards. A Federal unemployment tax of 3 percent was levied, with certain exceptions, on the payrolls of employers of eight or more persons (now four or more), and a credit of up to 90 percent of this tax was allowed employers covered by State laws meeting the requirements of the Federal act. Each State pays benefits to eligible unemployed workers from a special State trust fund in which payroll taxes contributed by employers (and also by employees in two States) are deposited. The cost of operating each State's employment security agency, which administers both the unemployment compensation and employment service functions, is paid entirely by the grant financed from the Federal Government's three-tenths of 1 percent share of the payroll tax. The program is administered by the Bureau of Employment Security in the Department of Labor.

FISH AND WILDLIFE RESTORATION AND MANAGEMENT

The Federal Aid in Wildlife Restoration (Pittman-Robertson) Act of 1937 and the Federal Aid in Fish Restoration (Dingell-Johnson) Act of 1950 form the basis for grant programs administered jointly by the Fish and Wildlife Service of the Department of the Interior. States frequently submit single projects in which the costs are prorated between these companion programs. In the fish restoration program, Federal grants are provided to the State fish and game departments for carrying out sportfish restoration and management. The types of approvable activities are research into problems of fish

management and culture, restoration and improvement of habitat, acquisition of lands and waters, and the maintenance of completed projects. Funds for the program are derived from a 10-percent excise tax on sport-fishing equipment and are allotted to the States on the basis of both area and the number of licensed fishermen. The wildlife restoration program includes, among approved activities, the restoration and improvement of lands and waters for wildlife habitat, acquisition of lands to be used for Federal resting or breeding grounds, research into the problems of wildlife management, and the maintenance of completed projects. Funds for carrying out the program, derived from an 11-percent excise tax on firearms and ammunition, are allotted in relation to the land area and the number of paid hunting license holders in each State. The Federal share of project costs is limited to 75 percent in both of these programs.

FLOOD PREVENTION AND WATERSHED PROTECTION

Under the Watershed Protection and Flood Prevention Act of 1954, the Federal Government cooperates with local organizations (States and their political subdivisions such as soil-conservation districts, flood-control districts, counties, and municipalities) for the purpose of making full use of water resources, preventing erosion, and reducing damages from floodwater and sediment in small watersheds. The program is intended to be an integral part of the total soil and water conservation program of the Nation and to round out the flood-control program by applying water-control measures on upstream watershed lands where the water first falls. The Federal Government shares the cost of installing works of improvement in accordance with a work plan developed for each watershed project. The amount of the Federal share of improvement costs varies with the purposes of each project and the nature of the benefits. The Soil Conservation Service of the Department of Agriculture administers the program.

HIGHWAY CONSTRUCTION

Commencing with the Federal-Aid Road Act of 1916, the Federal Government has assisted the States in the construction of highways. Funds are provided for projects on designated Federal-aid highway systems: The primary system, the secondary system, extensions of the primary and secondary systems within urban areas, and the National System of Interstate and Defense Highways. Funds authorized by the Congress are apportioned to the States, on a matching basis, in accordance with formulas involving the factors of area, population, and road mileage. However, commencing with the fiscal year 1960 funds for the National System of Interstate and Defense Highways will be apportioned among the States in the ratio which the estimated cost of completing such System in each State bears to the sum of the estimated cost of completing the System in all of the States. For primary, secondary and urban funds, the regular matching ratio is 50 percent Federal funds to 50 percent State funds, with increased Federal participation in States having large areas in public lands and nontaxable Indian lands; for the additional funds authorized for the fiscal year 1959 the Federal share is increased to two-thirds of project costs. The matching ratio for the Interstate System is 90 percent Federal funds to 10 percent State funds, with a larger share applicable to the public-lands States and to States which agree to control outdoor advertising in areas adjacent to the Interstate System. The program is administered by the Bureau of Public Roads in the Department of Commerce.

HOSPITAL AND MEDICAL FACILITIES SURVEY AND CONSTRUCTION

Grants for hospital survey and construction purposes were first authorized by the Hospital Survey and Construction Act of 1946. The Hill-Burton Act provided Federal funds for the construction of public-health centers and four types of public and other nonprofit hospitals: General, tubercular, mental, and chronic disease. The Medical Facilities Survey and Construction Act of 1954 expanded the scope of the program to include four additional categories of medical facilities: Diagnostic or treatment centers, hospitals for the chronically ill and impaired, rehabilitation facilities, and nursing homes. Survey and planning grants are allotted to the States on a population basis, while funds for construction are allotted by a formula which takes into account both population and State per capita income. The amount of matching funds required is also related to a State's per capita income. The program is administered by the Public Health Service, Department of Health, Education, and Welfare.

LIBRARY SERVICES FOR RURAL AREAS

This program, authorized by the Library Services Act of 1956, is intended to stimulate the States to extend public library services to rural areas without such services or with inadequate services. Federal grants must be matched by State or local government funds in amounts varying with a State's fiscal ability. Each State is required to submit a plan of operation for approval by the Commissioner of Education, Department of Health, Education, and Welfare.

MAJOR DISASTER RELIEF

Under the first Federal major disaster relief law enacted in 1947, surplus property was granted or loaned to stricken areas. With the depletion of available surplus property, it became increasingly necessary for the President to allocate money for disaster relief from emergency funds. The enactment of Public Law 875 in 1950 authorized a specific fund for making contributions to State and local governments to alleviate suffering from major disasters and to effect temporary repair or replacement of essential public facilities. In addition to monetary assistance, surplus commodities, property, and services may also be donated. Public Law 875 does not define a major disaster or establish criteria for the distribution of assistance. The law requires only that State and local governments shall spend a reasonable amount of their own funds for disaster relief purposes. Before assistance can be provided, however, the Governor must certify the need for Federal aid, and the President must declare the disaster to be of sufficient magnitude to warrant Federal help. The administration of disaster relief was transferred to the Federal Civil Defense Administration by Executive Order 10427 in 1953.

MATERNAL AND CHILD HEALTH SERVICES

The purpose of this program, established by the Social Security Act of 1935, is to enable each State to extend and improve services for promoting the health of mothers and children, especially in rural areas and areas suffering from severe economic distress. While the program is primarily one of preventive health services, medical care is also a feature in some of the States. The Federal appropriation is equally divided into two funds. Fund A is apportioned partly by an equal grant to each State and partly in proportion to the number of live births. After reserving an amount for special projects, fund B is apportioned according to the need of each State for financial assistance in carrying out its approved plan. Fund A grants must be matched dollar for dollar. The program is administered by the Children's Bureau in the Department of Health, Education, and Welfare.

PUBLIC ASSISTANCE

Under the Social Security Act of 1935, as amended, the Federal Government shares with the States the cost of furnishing financial assistance to needy persons who are aged, blind, or permanently and totally disabled, or in need of medical care, and to dependent children who are deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent. Public assistance is intended to supplement the needy person's resources to enable him to secure the necessities of life. The programs are administered by the States under State laws. Each State establishes its own eligibility requirements and its own standards of need and amount of payment subject to certain Federal conditions. The Federal grant is open end, with the amount of the Federal share depending upon each State's expenditures under an approved operating plan. The program is administered by the Bureau of Public Assistance in the Department of Health, Education, and Welfare.

PUBLIC HEALTH SERVICES

Continuing Federal grants for public health activities were inaugurated under the Social Security Act of 1935. Grants for the control of venereal disease were initiated earlier by the Chamberlain-Kahn Act of 1918 but were discontinued after a few years. The Public Health Service Act of 1944, consolidating and expanding previous public health legislation, is now the basic public health statute. Grants are made to assist the States and their political subdivisions to maintain adequate programs for general health and in five specific categories: cancer control, heart disease control, mental health, tuberculosis control, and venereal disease control. Funds are allotted to the States for each category except venereal disease on the basis of formulas which take into account population, the extent of the particular health problem, and State per capita income. Funds for venereal disease control are granted on a project basis at the discretion of the Surgeon General and do not require matching. Grants for all categories must be matched by expenditure of one dollar from State or local sources for every Federal dollar. The program is administered by the Public Health Service, Department of Health, Education, and Welfare.

PUBLIC HOUSING, LOW RENT

The U.S. Housing Act of 1937, as amended, is the statutory basis for the low-rent public housing program. Under the program, local housing authorities initiate, plan, build, own, and operate low-rent public housing projects under authorizing State statutes and with Federal financial aid in the form of loans and annual contributions. The annual contribution, legally limited (under contracts entered into pursuant to 1949 amendments) to a period of 40 years, constitutes the Federal subsidy which, up to a fixed maximum, makes up the difference between the cost of operating a project and the rents which the low-income tenants can afford to pay. The purpose of the program is to provide a minimum of decent, safe, and sanitary housing for families who cannot afford to rent such housing provided by private enterprise. The Public Housing Administration in the Housing and Home Finance Agency approves projects on the basis of the local need for low-rent housing.

RESIDENT INSTRUCTION IN LAND-GRANT COLLEGES

The first Morrill Act in 1862 made grants of public lands to the States, the proceeds of which were used to endow colleges of agriculture and the mechanic arts. Under the terms of the second Morrill Act of 1890, and supplemental acts, the Federal Government appropriates funds annually to be used for purposes of resident instruction and facilities for instruction in the 68 land-grant colleges and universities. The Federal grant is allotted partly in equal amounts to each State and partly on the basis of population; State matching is not required. The program is administered by the Office of Education, Department of Health, Education, and Welfare.

SCHOOL CONSTRUCTION IN FEDERALLY AFFECTED AREAS

In 1950 Congress enacted Public Law 815 to provide financial assistance for emergency school construction in areas where Federal activities had overburdened local school facilities and where local taxable resources were reduced because of Federal ownership of real property. At the same time, Congress enacted Public Law 874 to provide assistance for the operation and maintenance of schools in such areas. Originally enacted as a temporary measure, the construction program has been extended several times and modified somewhat in formula and content. Funds are distributed to eligible school districts, upon application, by a formula under which the Federal share of State average per pupil construction costs is determined by the number of federally connected pupils whose parents either live or are employed on Federal property, or both, or have come into the community to accept employment in Federal activities carried on directly or through a contractor. Federal funds may be used only for the construction of "minimum" school facilities; local funds make up any difference between the total cost of a project and the allowable Federal share. The program is administered by the Office of Education, Department of Health, Education, and Welfare.

SCHOOL OPERATION AND MAINTENANCE IN FEDERALLY AFFECTED AREAS

Public Law 874 was enacted in 1950 to provide for payments to school districts for current operating expenses in areas where Federal activities have imposed a financial burden due to substantial increases in enrollments resulting from Federal activities and a reduction in taxable resources because of Federal ownership of real property. At the same time, Congress enacted Public Law 815 to provide aid for school construction in such areas. Funds are distributed to eligible school districts, upon application, in relation to the number of school children whose attendance results from a Federal activity and the particular category (related to the degree of burden associated with the parent's residence and/or employment on a Federal property) in which pupils are counted. To be eligible for payments, a school district must have certain percentages of its total attendance identified with a Federal property or activity. Special payments are authorized for districts which have lost a substantial portion of their tax base because of Federal property acquisition since 1939, and for districts experiencing a sudden and substantial attendance increase and an unusual financial burden due to Federal defense contract activities. The program is administered by the Office of Education, Department of Health, Education, and Welfare.

SCHOOL LUNCH

Under the National School Lunch Act of 1946, cash grants and commodity donations are made for nonprofit lunches served in public and private schools of high school grade or under. The purposes outlined in the act are to safeguard the health of the Nation's children and to encourage the consumption of agricultural products. School lunch programs also provide an outlet for food commodities acquired by the Department of Agriculture under market stabilization purchase programs. Federal funds, subject to matching, are allotted to the States by a statutory formula which takes into account the number of a State's school-age children and its fiscal capacity as measured by per capita income. The program is operated according to the terms of an agreement between the State educational agency, which administers the program within the State, and the Department of Agriculture. The Deparment of Agriculture makes cash payments directly to nonprofit private schools in the 28 States and 2 territories in which legal barriers prevent a State from doing so.

SPECIAL MILK

Established by the Agricultural Act of 1954, the program is intended both to expand the market for fluid milk and to increase its consumption by children in nonprofit schools of high school grade and under and in nonprofit institutions devoted to the care and training of children. The amount of funds reserved for each State is based upon previous participation plus an allowance for program expansion. The program is administered by agencies of the various States operating under an agreement with the Department of Agriculture, except where legal or other barriers make it necessary for the Department to directly administer the program.

SLUM CLEARANCE AND URBAN RENEWAL

The Housing Act of 1949 (title I), as amended, is the basis for the slum clearance and urban redevelopment activities of the Federal Government. The 1949 act was broadened by the Housing Act of 1954 which authorized Federal assistance to local communities not only in the clearance and redevelopment of slum areas as originally provided, but also to help them in preventing the spread of slums and urban blight through the rehabilitation and conservation of blighted and deteriorating areas. Federal financial assistance is provided in the form of survey and planning advances, loans, and capital grants. The capital grants may finance up to two-thirds of the net project cost, or deficit, of each project. Localities are required to match these funds with at least one-third of the net costs, either in cash or in the form of land donations, public facilities such as school buildings or other public improvements which are of direct benefit to the project. The Housing Act of 1957 established an alternative method of computing the capital grant on the basis of three-fourths of the net project cost when survey and planning and administrative expenses are not included in project cost. In addition, special demonstration grants are authorized to aid localities in developing, testing, and reporting on improved techniques for preventing and eliminating slums and urban blight. Federal financial assistance may be made available only to an authorized local public agency. Such agencies generally derive their authority from specific State enabling acts or from amendments to State housing legislation. The program is administered by the Urban Renewal Administration in the Housing and Home Finance Agency.

STATE AND PRIVATE FORESTRY COOPERATION

Federal cooperation in the suppression of forest fires began under the Weeks Act of 1911 and was strengthened and broadened to include assistance in tree planting and forestry education under the Clarke-McNary Act of 1924. Cooperation in forest management on farm woodlands began under the Norris-Doxey Farm Forestry Act of 1937, and this activity was broadened to include all private woodlands under the Cooperative Forest Management Act of 1950. The Department of Agriculture, through the Forest Service, provides assistance to the States for forest fire protection and for encouraging reforestation and good management of woodlands. Funds are allotted to the States principally by formula, but in part by a uniform grant and on a project basis. Federal grants must be matched dollar for dollar.

URBAN PLANNING

The Housing and Home Finance Administrator is authorized under the Housing Act of 1954, as amended, to make grants to State planning agencies for planning assistance to municipalities of less than 25,000 population. The Administrator may also make grants to authorized State, metropolitan, or regional agencies for planning work in metropolitan and regional areas, and to municipalities and counties of at least 25,000 population which have suffered substantial damage as a result of a major disaster. Official planning agencies may also receive grants to plan for areas facing rapid urbanization as a result of Federal installations. In addition, grants may be made to State planning agencies to plan for localities affected by major disasters or by Federal installations. A grant may not exceed 50 percent of the estimated planning costs.

VOCATIONAL EDUCATION

Grants for vocational education began under the Smith-Hughes Act of 1917 to help communities provide vocational training of less than college grade in certain occupational fields. The program now provides grants to States for training in agriculture, distributive occupations, home economics, trades and industry, practical nursing, fishery trades and in highly skilled technical occupations essential for the national defense. Federal grants, which must be matched dollar for dollar, are allotted to the States by population formulas which differ with respect to the various training categories. The program is administered by the Office of Education, Department of Health, Education, and Welfare.

VOCATIONAL REHABILITATION

Grants to assist the States to prepare disabled persons for gainful employment were initiated in 1920, but the program was substantially broadened by later legislative acts. Originally devoted to training, counseling, placement, and the provision of artificial appliances, the program was expanded in 1943 to include physical restoration services. The vocational rehabilitation amendments of 1954 authorized further increases in the amount of Federal aid and, in addition, provided grants for encouraging the extension and improvement of services and for special projects. The act requires the States gradually to assume a larger portion of the total cost so that the States' share, which was approximately 34 percent in 1954, will be 40 percent by 1962. Funds for the support of rehabilitation services are allotted by a formula which takes into account State population and per capita income. The amount of matching funds required of each State is determined by its per capita income level in relation to other States. The program is administered by the Office of Vocational Rehabilitation, Department of Health, Education, and Welfare.

WASTE TREATMENT FACILITIES

Under the Federal Water Pollution Control Act of 1956, the Surgeon General of the Public Health Service is authorized to make grants to any State, interstate, municipal or intermunicipal agency for the construction of necessary treatment works to prevent the discharge of untreated or inadequately treated sewage or other waste into any waters. Such grants must be approved by the State pollution control agency and the Surgeon General. No grant is to exceed 30 percent of the estimated reasonable cost thereof as determined by the Surgeon General, or in an amount exceeding $250,000, whichever is the smaller, and at least 50 percent of the funds are to be used for projects serving municipalities of 125,000 population or under. Funds are allotted to the States on the basis of population and per capita income.

WATER POLLUTION CONTROL

Grants to State and interstate agencies to assist them in meeting the costs of establishing and maintaining adequate measures for the prevention and control of water pollution were authorized by the Federal Water Pollution Control Act of 1956. Federal grants had previously been authorized from 1950 through 1952 for studies and investigation of water pollution caused by industrial wastes. Funds are allotted to the States on the basis of population, the extent of the

water pollution problem, and financial need. Matching requirements are related to each State's per capita income level. The program is administered by the Public Health Service, Department of Health, Education, and Welfare.

Appendix B.—Expenditures for Federal grants-in-aid to State and local governments

PART I.—SELECTED FISCAL YEARS 1902 THROUGH 1932

[In thousands of dollars [1]]

Function, agency, and program [2]	1902	1912	1920	1925	1929	1930	1931	1932
Veterans' services and benefits: Veterans' Administration: Federal aid to State homes [3]	1,005	1,152	1,095	706	560	575	453	786
Social welfare, health, and security:								
Federal Security Agency:								
Payments to States, Vocational Rehabilitation Act, as amended				[4] 600	681	736	903	996
Promotion of welfare and hygiene of maternity and infancy				[4] 884	801	10		
Control of venereal diseases [3]			1,759	25				
Federal Works Agency: Highway funds, advances to States emergency expenditures							20,296	58,912
Total, social welfare, health and security			1,759	1,509	1,482	746	21,199	59,908
Education and general research: Federal Security Agency:								
Promotion of vocational education			2,107	[4] 5,873	6,801	7,385	7,992	8,533
Colleges for agriculture and the mechanic arts	1,200	2,500	2,500	2,550	2,550	2,550	2,550	2,550
To promote education of the blind	10	10	30	50	75	75	75	75
Total, education and general research	1,210	2,510	4,637	8,473	9,426	10,010	10,617	11,158
Agriculture and agricultural resources: Department of Agriculture:								
Payments to States, Hawaii, Alaska, and Puerto Rico for cooperative agricultural extension work			4,472	5,860	7,163	7,540	8,650	8,633
Payments to States, Hawaii, Alaska, and Puerto Rico, agricultural experiment stations	786	1,593	1,440	1,440	3,840	4,335	4,340	4,357
Total, agriculture and agricultural resources	786	1,593	5,912	7,300	11,003	11,875	12,990	12,990
Natural resources not primarily agricultural: Department of Agriculture:								
Forest-fire cooperation [3]				346	1,067	1,237	1,532	1,573
Farm and other private forestry cooperation [3]					66	81	91	91
Total, natural resources not primarily agricultural				346	1,133	1,318	1,623	1,664
Transportation and communication:								
U.S. Maritime Commission: State marine schools			177	75	75	75	125	100
Federal Works Agency:								
Federal-aid highway system			20,306	95,337	84,007	77,891	135,593	129,805
Flood relief, restoration of roads and bridges					1,917	1,873	2,410	2,101
Total, transportation and communication			20,483	95,412	85,999	79,839	138,128	132,006
General government: District of Columbia-Federal contribution [5]	4,082	6,006	9,559	10,044	9,118	9,202	9,653	9,691
Total, grants-in-aid	7,083	11,261	43,445	123,790	118,721	113,565	195,163	228,803

PART II.—FISCAL YEARS 1933 THROUGH 1940

[In thousands of dollars [1]]

Function, agency, and program [2]	1933	1934	1935	1936	1937	1938	1939	1940
Veterans' services and benefits: Veterans' Administration, Federal aid to State homes [3]	758	522	499	568	610	674	720	1,368
Social welfare, health, and security:								
Federal Security Agency:								
Payments to States, Vocational Rehabilitation Act, as amended	1,006	867	1,042	1,436	1,592	1,669	1,799	2,125
Grants to States for public assistance—old-age assistance, aid to dependent children, and aid to the blind				28,424	143,934	216,073	246,898	279,181
Child welfare services				225	969	1,356	1,521	1,487
Civil Works Administration: Emergency expenditures		805,123	11,327	676	297	222		
Public Works Administration: Public bodies, emergency expenditures		78,596	137,707	247,697	277,690	177,132	327,808	285,676
Federal Emergency Relief Administration: Emergency expenditures		707,352	1,814,477	495,592	8,390	4,369	1,660	541
Federal Works Agency:								
Highways, advances to States, emergency expenditures	62,127	55,669	2,136	63				
Highways, emergency expenditures		169,187	275,667	203,113	267,685	88,042	33,856	13,565
Flood relief, for restoration of roads and bridges						[6]	210	338
Works Progress Administration:								
Emergency relief				[3] 1,263,661	[3] 1,821,904	[3] 1,422,229	1,929,276	[4] 1,400,000
Control of venereal diseases [3]							2,361	4,188
Assistance to States, general [3]				2,386	7,819	8,892	7,985	9,501
Maternal and child health services				1,239	3,002	3,729	3,739	4,767
Services for crippled children				698	1,991	2,748	3,029	3,291
Total, social welfare, health, and security	63,133	1,816,794	2,242,356	2,245,210	2,535,273	1,926,461	2,560,142	2,004,660
Education and general research: Federal Security Agency:								
Promotion of vocational education	7,724	6,998	9,997	9,450	9,695	19,568	19,533	19,299
Colleges for agriculture and the mechanic arts	2,550	2,550	2,550	3,530	4,030	4,530	5,030	5,030
To promote education of the blind	75	75	75	75	75	115	115	115
Total, education and general research	10,349	9,623	12,622	13,055	13,800	24,213	24,678	24,444
Agriculture and agricultural resources:								
Department of Agriculture:								
Payments to States, Hawaii, Alaska, and Puerto Rico for cooperative agricultural extension work	8,607	8,352	8,580	16,664	16,343	17,252	17,822	18,448
Payments to States, Hawaii, Alaska, and Puerto Rico, agricultural experiment stations	4,359	4,358	4,384	4,992	5,611	6,229	6,538	6,848
Exportation and domestic consumption of agricultural commodities:								
School lunches [3]						9,461	68,010	117,817
Purchase of commodities for distribution through authorized agencies [3]								
Total, agriculture and agricultural resources	12,966	12,710	12,964	21,656	21,954	32,942	92,370	143,113

See footnotes at end of tables.

Appendix B.—Expenditures for Federal grants-in-aid to State and local governments—Continued

PART II.—FISCAL YEARS 1933 THROUGH 1940—Continued

[In thousands of dollars [1]]

Function, agency, and program [2]	1933	1934	1935	1936	1937	1938	1939	1940
Natural resources not primarily agricultural:								
Department of Agriculture:								
Forest-fire cooperation [3]	1,450	1,465	1,457	1,419	1,472	1,461	1,790	2,083
Farm and other private forestry cooperation [3]	73	51	54	54	67	67	93	129
New England hurricane damage							469	3,603
Department of the Interior: Federal aid in wildlife restoration							122	577
Total, natural resources not primarily agricultural	1,523	1,516	1,511	1,473	1,539	1,528	2,474	6,392
Transportation and communication:								
U.S. Maritime Commission: State marine schools	189	102	182	150	210	149	247	140
Federal Works Agency:								
Federal-aid highway system	103,608			27,192	78,852	134,728	123,619	105,502
Federal-aid secondary or feeder roads						3,199	16,434	18,355
Elimination of grade crossings						4,865	20,977	29,522
Flood relief, for restoration of roads and bridges	440	342	144	223	106	162	(7)	
Total, transportation and communication	104,237	444	326	27,565	79,168	143,103	161,277	153,519
Labor:								
Department of Labor: Grants to States for public employment offices		[8] 633	1,315	[8] 2,049	[8] 2,325	3,703	3,526	3,367
Federal Security Agency: Unemployment compensation administration				938	9,159	42,202	58,812	58,335
Total, labor		633	1,315	2,987	11,484	45,905	62,338	61,702
General government: District of Columbia, Federal contribution [5]	7,967	837	5,827	5,852	5,000	5,000	5,000	6,000
Total, grants-in-aid	200,933	1,848,079	2,277,420	2,318,366	2,668,828	2,179,826	2,908,999	2,401,198

PART III.—FISCAL YEARS 1941 THROUGH 1948

[In thousands of dollars [1]]

Function, agency, and program [2]	1941	1942	1943	1944	1945	1946	1947	1948
National defense: Executive Office of the President—War Shipping Administration: State marine schools (war) [5]	165	122	257	175	186			
Veterans' services and benefits: Veterans' Administration:								
Federal aid to State homes [3]	1,432	1,375	1,176	1,181	1,194	1,354	1,572	1,765
Grants to States for supervision of establishments engaged in on-the-job training program [3]							2,895	5,854
Grants to States for administration of unemployment and self-employment benefits [3]						18,884	28,587	24,178
Federal Works Agency: Veterans' educational facilities							26,128	53,179
Total, veterans' services and benefits	1,432	1,375	1,176	1,181	1,194	20,238	59,182	84,977
Social welfare, health, and security:								
Federal Security Agency:								
Payments to States, Vocational Rehabilitation Act, as amended	2,217	2,675	2,803	4,629	7,155	10,764	12,387	21,842
Grants to States for public assistance, old-age assistance, aid to dependent children, and aid to the blind	329,845	376,415	395,449	429,457	401,400	421,196	644,045	731,989
Child welfare services	1,532	1,573	1,583	1,423	1,363	1,278	[9] 2,010	3,422
Control of venereal diseases [3]	5,514	7,645	9,325	9,703	9,482	12,268	12,866	15,192
Control of tuberculosis [3]					1,370	5,179	6,873	6,703
Assistance to States, general [3]	10,722	11,473	10,573	10,840	10,913	10,964	11,717	11,173
Payments to States for surveys and programs for hospital construction							358	656
Grants for hospital construction								392
Mental health activities [3]								1,653
Grants, National Cancer Institute								2,825
Emergency maternity and infant care (war)				29,946	45,012	36,071	[10] 12,933	2,068
Maternal and child health services	5,471	5,927	5,708	5,948	5,486	6,056	[11] 10,672	10,584
Services for crippled children	3,928	3,997	3,848	3,787	3,839	4,151	[12] 7,430	7,423
Department of Agriculture: National school lunch program						(13)	[12] 76,100	[14] 68,313
Public Works Administration: Public bodies, emergency expenditures	116,786	36,102	21,159	4,319				
Works Progress Administration: Emergency relief	1,161,540	874,043	264,800	5,457				
Federal Works Agency:								
Liquidation of PWA					4,619	4,220	2,484	7,599
Highways, emergency expenditures	7,010	3,490	1,677	1,710	401	(15)		
Flood relief, for restoration of roads and bridges	242	54	(6)					
Total, social welfare, health, and security	1,644,807	1,323,394	716,925	507,219	491,040	512,147	799,875	891,834
Housing and community facilities:								
Housing and Home Finance Agency:								
Annual contributions	4,747	9,926	9,883	10,130	9,534	7,136	5,667	3,336
Veterans' reuse housing						29,253	357,167	42,471
Federal Works Agency:								
Community facilities, defense public works		34,096	108,529	124,190	119,413	54,620	9,727	1,003
Public works advance planning—repayable advances						13,628	21,116	7,101
Total, housing and community facilities	4,747	44,022	118,412	134,320	128,947	104,637	393,677	53,911
Education and general research:								
Federal Security Agency:								
Promotion of vocational education	20,068	20,376	20,911	20,334	19,811	20,153	20,493	26,538
Food conservation							1,111	
Colleges for agriculture and the mechanic arts	5,030	5,030	5,030	5,030	5,030	5,030	5,030	5,030
To promote education of the blind	115	115	115	115	115	125	125	125
Federal Works Agency: Maintenance and operation of schools							5,411	5,461
Total, education and general research	25,213	25,521	26,056	25,479	24,956	25,308	32,170	37,154

See footnotes at end of tables.

Appendix B.—Expenditures for Federal grants-in-aid to State and local governments—Continued

PART III.—FISCAL YEARS 1941 THROUGH 1948—Continued

[In thousands of dollars [1]]

Function, agency, and program [2]	1941	1942	1943	1944	1945	1946	1947	1948
Agriculture and agricultural resources:								
Department of Agriculture:								
Payments to States, Hawaii, Alaska, and Puerto Rico for cooperative agricultural extension work	18,477	18,847	18,784	18,754	18,715	23,148	26,584	26,364
Research and Marketing Act of 1946 [3]								2,421
Payments to States, Hawaii, Alaska, and Puerto Rico, agricultural experiment stations	6,861	6,925	6,922	6,946	6,972	7,195	7,190	7,151
Exportation and domestic consumption of agricultural commodities:								
School lunches	84,791	51,747	15,340	34,400	47,844	55,938	[16]	
Purchase of commodities for distribution through authorized agencies [3]			6,644	6,219	8,331	6,146	31,342	[17] 35,004
Total, agriculture and agricultural resources	110,129	77,519	47,690	66,319	81,862	92,427	65,116	70,940
Natural resources not primarily agricultural:								
Department of Agriculture:								
Forest-fire cooperation [3]	1,972	2,176	3,666	5,911	5,946	6,974	7,873	8,791
Farm and other private forestry cooperation [3]	109	110	121	143	112	104	107	218
New England hurricane damage	850							
Forest-fire control (emergency)		520	3,345					
Department of Interior: Federal aid in wildlife restoration	1,189	1,712	1,873	1,305	1,415	1,196	1,774	2,464
Total, natural resources not primarily agricultural	4,120	4,518	9,005	7,359	7,473	8,274	9,754	11,473
Transportation and communication:								
U.S. Maritime Commission: State marine schools [18]						232	202	296
Federal Works Agency: Federal-aid highway system	118,616	107,116	66,014	36,129	25,242	29,302	37,725	23,339
Federal-aid secondary or feeder roads	17,359	16,049	6,613	4,421	3,547	5,204	8,184	5,559
Elimination of grade crossings	29,925	26,041	13,425	6,457	4,522	5,324	6,266	9,863
Federal-aid postwar highways						4,619	131,051	275,685
Public lands highways		812	[3] 70	168	62	30	19	239
Strategic highway network (war)				13,528	9,787	8,347	9,368	3,113
Access roads (war)		10,076	90,685	88,111	44,830	18,169	13,232	7,704
Surveys and plans (war)				173	605	1,074	968	756
Highways, emergency expenditures					[19]	3,180	1,069	831
Flood relief, for restoration of roads and bridges [7]			15					51
Flight strips (war)		11	4,613	3,363	659	387	120	112
Department of Commerce: Federal-aid airport program								6,000
Total, transportation and communication	165,900	160,105	181,435	152,350	89,254	75,868	208,204	333,550
Labor:								
Department of Labor: Grants to States for public employment offices	3,188	1,600					42,536	65,893
Federal Security Agency:								
Unemployment compensation administration	63,011	70,257	54,416	36,201	34,419	55,726	59,682	67,155
Education and training, defense workers (war)	60,301	111,263	131,241	72,731	44,717			
Total, Labor	126,500	183,120	185,657	108,932	79,136	55,726	102,218	133,048
General government: District of Columbia: Federal contribution	6,000	6,000	6,000	6,000	6,000	6,000	8,000	12,000
Total, grants-in-aid	2,089,013	1,825,696	1,292,613	1,009,334	910,048	900,625	1,678,196	1,628,887

PART IV.—FISCAL YEARS 1949 through 1954

[In thousands of dollars [1]]

Function, agency, and program [2]	1949	1950	1951	1952	1953	1954
Veterans' services and benefits:						
Veterans' Administration:						
Aid to State homes	3,145	3,355	3,529	3,646	3,726	[22] 3,745
State supervision of schools and training establishments	4,875	3,801	3,010	2,410	2,000	[22] 2,328
Administration of unemployment and self-employment benefits	21,019	7,468	2,432	600	600	
General Services Administration:						
Veterans' educational facilities	2,548	653	27	[20]		
State supervision of schools and training establishments						790
Total, veterans' services and benefits	31,587	15,277	8,998	6,656	6,326	6,863
Social security, health, labor, and welfare:						
Federal Security Agency, [20] [21] Department of Health, Education, and Welfare:						
Public assistance	920,814	1,123,418	1,185,764	1,177,688	1,329,933	1,437,516
Vocational rehabilitation	14,823	24,937	16,141	21,508	22,246	22,977
Child welfare services [23]	2,197	320				
Hospital construction	10,096	55,658	106,766	124,079	108,909	89,918
Portion to private nonprofit institutions						(40,463)
Surveys and programs for hospital construction	195	110	108	63	87	10
Assistance to States, general public health	11,213	14,081	13,540	13,500	13,000	[22] 10,129
Control of venereal disease	14,618	13,367	10,667	9,331	6,062	[22] 2,165
Control of tuberculosis	6,786	6,781	6,350	5,800	5,300	[22] 4,273
Mental health activities	2,925	3,294	3,074	2,913	3,060	[22] 2,307
National Heart Institute		1,770	1,359	1,258	1,446	[22] 1,054
National Cancer Institute	3,329	3,246	3,034	3,128	3,009	[22] 3,320
Maternal and child health services [23]	1,229	139				
Emergency maternity and infant care (national defense)	[3] 47					
Services for crippled children	220	102				
Maternal and child welfare	19,424	22,216	28,058	31,032	31,503	29,380
Disease and sanitation control, Alaska	782	757	694	630	510	[22] 564
Water pollution control		995	956	929	20	[3] 69
Defense community facilities					1,079	
Department of Agriculture: National school lunch program (and special milk program, 1959)	74,902	83,066	82,761	83,570	82,802	83,497
General Services Administration:						
Liquidation of public works	7,718	378	[22]			
Hospital facilities in District of Columbia (private nonprofit)						[22] 507
Interstate Commission on the Potomac River Basin						5

See footnotes at end of tables.

Appendix B.—Expenditures for Federal grants-in-aid to State and local governments—Continued

PART IV.—FISCAL YEARS 1949 through 1954—Continued

[In thousands of dollars [1]]

Function, agency, and program [2]	1949	1950	1951	1952	1953	1954
Social security, health, labor, and welfare—Continued						
General Services Administration—Continued						
Assistance for school construction and operation in federally affected areas:						
Maintenance and operation of schools, community facilities	5,644	7,099				
School construction			3,234	55,808	134,365	105,267
Maintenance and operation of schools			13,773	35,504	65,956	67,396
Vocational education	26,122	26,360	26,652	25,777	25,432	25,321
Colleges for agriculture and the mechanic arts	5,030	5,030	5,030	5,030	5,030	5,050
Education for the blind	125	125	125	115	175	175
Department of Labor: Unemployment compensation and employment service administration	140,314	207,617	177,913	186,528	202,170	202,836
Total, social security, health, labor, and welfare	1,268,459	1,600,866	1,685,999	1,784,191	2,042,094	2,093,599
Commerce and housing:						
Funds appropriated to the President: Disaster relief				16,257	11,887	2,528
Housing and Home Finance Agency:						
Low-rent housing program, annual contributions	3,383	7,121	6,720	12,544	25,881	[22] 44,473
Veterans' reuse housing	4,649	2,533	644	583	511	
Slum clearance and urban redevelopment, capital grants					7,818	[22] 11,583
Defense community facilities and services					2,434	8,578
General Services Administration: Defense public works, community facilities	552	265	117	7	9	3
Department of Health, Education, and Welfare: Defense community facilities and services						[24] 4,139
Department of Interior:						
Virgin Islands public works				1,625	1,412	1,544
Alaska public works				2,247	3,638	[22] 3,678
Federal Civil Defense Administration: Federal contributions				514	12,891	13,696
Department of Commerce:						
Federal aid airport program	30,406	33,433	30,388	32,808	26,853	[22] 17,481
State marine schools	493	158	162	155	163	[22] 150
Federal aid highways						519,659
Postwar Federal aid highways	367,506	406,190	383,400	405,604	497,382	
Federal aid highways (trust fund)						
Prior Federal aid highway laws	33,191	23,277	10,970	8,064	2,503	
War and emergency damage-roads, territory of Hawaii	2,045	2,029	1,569	1,291	1,002	810
Other Federal highway programs						1,977
Total, commerce and housing	442,225	475,006	433,970	481,699	594,384	630,299
Agriculture and agricultural resources, Department of Agriculture:						
Commodity Credit Corporation and removal of surplus agricultural commodities, contributions to school lunch program and to other public agencies						161,618
Removal of surplus agricultural commodities	45,850	50,000	12,915	33,172	52,000	
Commodity Credit Corporation: Donation of commodities		11,547	40,245	5,326		
Cooperative agricultural extension work	30,181	31,145	31,366	31,743	31,716	31,771
Agricultural experiment stations	7,354	12,244	12,382	12,424	12,371	13,426
Agricultural Marketing Act: Cooperative projects in marketing	3,246	1,340	1,436	1,200	1,250	
Watershed protection						972
Flood prevention						5,386
Total, agriculture and agricultural resources	86,631	106,276	98,344	83,865	97,337	213,173
Natural resources:						
Department of Agriculture: State and private forestry cooperation	9,177	9,466	9,745	10,037	10,230	9,799
Department of Interior:						
Wildlife restoration	4,820	7,491	7,995	9,518	11,463	[22] 12,847
Fish restoration and management				200	1,078	[22] 2,292
Total, natural resources	13,997	16,957	17,740	19,755	22,771	24,938
General government, Department of Interior:						
Grants to American Samoa, Guam, and the trust territories				5,391	7,161	6,300
District of Columbia: Federal contribution	12,000	12,000	10,800	11,400	11,000	12,000
Total, general government	12,000	12,000	10,800	16,791	18,161	18,300
Total, grants-in-aid	1,854,899	2,226,382	2,255,851	2,392,957	2,781,073	2,987,172

PART V.—FISCAL YEARS 1955 THROUGH 1962

[In thousands of dollars [1]]

Function, agency, and program [2]	1955	1956	1957	1958	1959	1960	1961 (estimated)	1962 (estimated)
Veterans' services and benefits, Veterans' Administration:								
Aid to State homes	[22] 5,229	5,532	[22] 5,680	[22] 5,971	[22] 6,244	[22] 6,128	[22] 7,536	[22] 7,574
State supervision of schools and training establishments	[22] 2,457	2,559	[22] 2,537	[22] 2,355	[22] 2,072	[22] 1,752	[22] 1,560	[22] 1,450
Total, veterans' services and benefits	7,686	8,091	8,217	8,326	8,316	7,880	9,096	9,024
Social security, health, labor, and welfare:								
Federal Security Agency,[20] [21] Department of Health, Education and Welfare:								
Public assistance	1,426,599	1,455,274	1,556,422	1,794,687	1,966,394	2,058,896	2,158,901	2,285,800
Vocational rehabilitation	25,983	[22] 34,996	[22] 34,228	[22] 40,789	45,373	48,607	55,176	59,270
Hospital construction	[22] 72,991	[22] 55,535	[22] 71,503	[22] 105,292	[22] 135,159	[22] 143,578	[22] 154,000	[22] 167,100
Portion to private nonprofit institutions	(40,145)	(29,895)	(39,327)	(57,905)	(74,337)	(80,411)	(86,000)	(93,700)
Research on utilization of hospital facilities			1,094					
Surveys and programs for hospital construction	146	284	394	124				
Assistance to States, general public health	[22] 9,724	[22] 13,332	[22] 12,509	[22] 14,931	[22] 14,924	[22] 14,985	[22] 17,000	[22] 17,820
Control of venereal disease	[20] 697	[22] 1,199	[22] 1,223	[22] 1,676	[22] 2,390	[22] 2,371	[22] 2,400	[22] 2,400
Control of tuberculosis	[22] 4,490	[22] 4,488	[22] 4,485	[22] 4,489	[22] 3,995	[22] 3,993	[22] 4,000	[22] 4,000
Mental health activities	[22] 2,317	[22] 2,980	[22] 3,949	[22] 3,944	[22] 3,986	[22] 4,905	[22] 6,000	[22] 6,000
National Heart Institute	[22] 1,067	[22] 1,088	[22] 1,987	[22] 2,044	[22] 2,075	[22] 2,905	[22] 3,500	[22] 3,500
National Cancer Institute	[22] 2,230	[22] 2,210	[22] 2,235	[22] 2,214	[22] 2,171	[22] 2,203	[22] 3,500	[22] 3,500

See footnotes at end of tables.

Appendix B.—Expenditures for Federal grants-in-aid to State and local governments—Continued

PART V.—FISCAL YEARS 1955 THROUGH 1962—Continued

[In thousands of dollars [1]]

Function, agency, and program [2]	1955	1956	1957	1958	1959	1960	1961 (estimated)	1962 (estimated)
Social security, health, labor, and welfare—Continued								
Federal Security Agency,[20] [21] Department of HEW—Con.								
Maternal and child welfare	29,256	33,622	38,251	40,723	43,498	47,433	51,261	53,506
Disease and sanitation control, Alaska	[22] 613	[22] 638	[22] 638					
Water pollution control	1		[22] 1,683	[22] 2,528	[22] 2,591	[22] 2,659	[22] 3,000	[22] 3,000
Grants and special studies, Alaska				[22] 1,638	[22] 1,638			
Hospital and medical care, Hawaii				[22] 1,241	[22] 1,046	[22] 1,065	[22] 1,100	[22] 1,100
Construction grants for waste treatment facilities			843	16,884	36,429	40,295	40,600	43,000
Grants for construction of health research facilities			[22] 75	[22] 28	[22] 896	[22] 504	[22] 520	[22] 500
Poliomyelitis vaccination program		22,645	30,056	309	−474	−1,287		
Department of Agriculture: National school lunch program (and special milk program—1959)	[22] 83,068	[22] 81,617	[22] 97,790	[22] 164,820	[22] 216,328	[22] 231,868	[22] 242,634	[22] 247,534
General Services Administration:								
Hospital facilities in District of Columbia (private nonprofit)	[22] 1,433	[22] 381	[22] 17	[22] 936	[22] 1,480	[22] 1,455	[22] 600	[22] 200
Interstate Commission on the Potomac River Basin	5	5						
Education and general research, Department of Health, Education, and Welfare:								
Assistance for school construction and operation in federally affected areas:								
School construction	[22] 121,058	[22] 89,271	[22] 67,068	[22] 4,397	[22] 66,097	[22] 70,553	[22] 63,350	[22] 57,382
Maintenance and operation of schools	[22] 81,859	[22] 80,927	[22] 93,194	[22] 104,143	[22] 132,073	[22] 166,661	[22] 181,000	[22] 93,500
Vocational education	30,522	33,199	37,582	39,192	38,353	39,140	40,257	40,442
Colleges for agriculture and the mechanic arts	5,051	5,051	5,051	5,052	5,052	5,052	7,277	10,744
Education of the mentally retarded						71	450	500
Defense education activities					43,958	68,507	78,314	88,083
Education for the blind	205	224	230	328	400	400	400	400
Grants for library facilities			1,440	4,892	5,362	7,037	7,986	8,416
White House Conference on Education	[22] 608							
White House Conference on the Aging						759	41	
Department of Labor: Unemployment compensation and employment service administration	193,552	231,169	248,315	[22] 290,680	[22] 297,261	[22] 317,156	[22] 361,208	[22] 345,366
Treasury Department: Credit to State accounts in unemployment trust fund		167,807	[22] 71,195	[22] 33,453				
National Science Foundation: Grants for research equipment			[22] 5	[22] 540				
Department of Interior, Bureau of Indian Affairs: Education and welfare services				7,337	[22] 5,452	[22] 5,378	[22] 5,450	[22] 6,950
Total, social security, health, labor and welfare	2,093,473	2,317,942	2,383,462	2,689,311	3,073,907	3,287,149	3,489,925	3,550,013
Commerce and housing:								
Funds appropriated to the President: Disaster relief	8,939	15,421	10,166	[22] 11,897	[22] 4,139	[22] 1,473	[22] 3,800	[22] 3,800
Small Business Administration: Grants for research						2,028	800	900
Housing and Home Finance Agency:								
Low-rent housing program, annual contributions	[22] 66,592	[22] 81,730	[22] 86,687	[22] 94,579	[22] 110,849	[22] 127,373	[22] 148,200	[22] 172,800
Slum clearance and urban renewal, capital grants	[22] 33,516	[22] 13,581	[22] 29,621	[22] 35,232	[22] 75,537	[22] 101,705	[22] 152,253	[22] 199,721
Defense community facilities and services	[22] 2,436	[22] 551	[22] 653	[22] 1,266	[22] 157	[22] 93		
Housing and Home Finance Agency: Urban planning grants		274	650	1,953	1,834	2,554	3,500	6,000
General Services Administration: Defense public works, community facilities	91	5						
Department of Health, Education, and Welfare: Defense community facilities and services	1,430		271	13	25			
Department of Interior:								
Virgin Islands public works	1,640	703	53	14	43	12		
Alaska public works	[22] 4,398	[22] 6,110	[22] 3,876	[22] 3,461	[22] 2,952	[22] 2,164	[22] 600	[22] 200
Federal Civil Defense Administration: Federal contributions	10,470	9,561	8,647					
Office of Civil and Defense Mobilization:								
Federal contributions				8,324	8,955	4,923	7,370	20,500
Research and development				[22] 5,443	[22] 2,483	[22] 26		
Federal Aviation Agency: Federal-aid airport program				[22] 42,870	[22] 56,578	[22] 57,113	[22] 83,305	[22] 82,153
Department of Commerce:								
Federal-aid airport program	[22] 8,227	[22] 16,688	[22] 20,629					
State marine schools	[22] 149	[22] 153	[22] 292	[22] 368	[22] 332	[22] 524	[22] 550	[22] 550
Federal-aid highways	583,678	728,099						
Federal-aid highways (trust fund)			952,556	1,493,218	2,588,796	2,912,999	2,839,963	2,959,000
Federal-aid highways, liquidation of contract authorization					4,784	−250		
Elimination of grade crossings				130				
Public lands highways				[22] 2,755	[22] 2,990	[22] 1,871	3,897	4,431
Forest highways				[22] 22,217	[22] 26,813	[22] 26,935	29,581	31,555
Highway surveys and plans					82	98	98	
Reimbursement to District of Columbia highway fund				200				
War and emergency damage, roads, Territory of Hawaii	615	460	82					
Other Federal highway programs	1,453	[22] 379	[22] 2,176					
Total, commerce and housing	723,634	873,715	1,016,359	1,723,940	2,877,781	3,241,641	3,273,917	3,481,610
Agriculture and agricultural resources: Department of Agriculture:								
Commodity Credit Corporation and removal of surplus agricultural commodities: contributions to school lunch program and to other public agencies	177,704	304,889	271,377	173,575	206,703	148,994	162,901	168,829
Emergency feed and seed assistance			17,426					
Cooperative agricultural extension work	39,387	[22] 43,966	[22] 49,787	[22] 56,520	[22] 60,624	[22] 61,303	[22] 65,000	[22] 67,390
Agricultural experiment stations	19,371	24,588	[22] 28,829	[22] 30,158	[22] 31,071	[22] 31,085	[22] 32,060	[22] 34,018
Agricultural Marketing Act: Cooperative projects in marketing	[22] 900	[22] 1,000	[22] 1,160					
Watershed protection	5,040	6,200	5,561	[22] 7,573	[22] 11,931	[22] 18,522	[22] 22,929	[22] 34,700
Flood prevention	5,328	[22] 8,634	[22] 7,646	[22] 9,209	[22] 10,981	[22] 14,169	[22] 13,852	[22] 16,500
Payments to States, territories, and possessions, agricultural marketing service				1,160	1,160	1,195	1,195	1,195
Total, agriculture and agricultural resources	247,730	389,277	381,786	278,195	322,470	275,268	297,937	322,632
National resources: Department of Agriculture:								
State and private forestry cooperation	9,508	10,694	10,831					
Forest protection and utilization				[22] 11,824				
Assistance to States for tree planting				51				
Forest protection and utilization, and assistance to States for tree planting					[22] 12,425	[22] 11,447	[22] 11,496	[22] 12,290

See footnotes at end of tables.

Appendix B.—Expenditures for Federal grants-in-aid to State and local governments—Continued

PART V.—FISCAL YEARS 1955 THROUGH 1962—Continued

[In thousands of dollars [1]]

Function, agency, and program [2]	1955	1956	1957	1958	1959	1960	1961 (estimated)	1962 (estimated)
National resources: Department of Agriculture—Continued								
Department of the Interior:								
Wildlife restoration	12,796							
Fish restoration and management	3,521							
Drainage of anthracite mines			7	415	1,532	1,232	1,365	500
Federal aid in fish restoration and management				[22] 5,224	[22] 4,644	[22] 4,318	[22] 4,500	[22] 5,000
Fish and wildlife restoration		[22] 15,803	[22] 15,739					
Federal aid in wildlife restoration				[22] 13,330	[22] 15,203	[22] 17,610	[22] 14,900	[22] 15,200
Bureau of Reclamation:								
Disposal of Coulee Dam community and other grants				[22] 10	[22] 163	[22] 101	[22] 17	[22] 2
Grants for small reclamation projects				1			130	
Bureau of Indian Affairs: Resources management				475	[22] 514	[22] 627	[22] 700	[22] 750
Department of Defense: Department of the Army: Corps of Engineers: U.S. section, St. Lawrence River Joint Board of Engineers	107	109						
Total, natural resources	25,932	26,606	26,577	31,330	34,481	35,335	33,108	33,742
General government:								
National Capital Planning Commission: Acquisitions of land				227	411	138	162	1,200
Department of Interior:								
Grants to American Samoa, Guam, and the trust territories	5,930	6,132	5,855	7,205	[22] 5,962	[22] 6,819	[22] 7,582	[22] 10,258
Care and custody of the Alaska Insane			228	71				
Funds appropriated to the President: Transitional grants to Alaska						10,386	6,098	6,000
District of Columbia: Federal contributions	21,890	19,892	[22] 20,000	20,000	[22] 25,000	[22] 25,000	[22] 33,700	[22] 36,000
Total, general government	27,820	26,024	26,083	27,503	31,373	42,343	47,542	53,458
Total, grants-in-aid	3,126,275	3,642,655	3,942,484	4,758,605	6,348,328	6,889,616	7,151,525	7,450,479

[1] Detail may not add to totals because of rounding.
[2] Where a program was transferred between agencies during the period covered, only the latter agency is shown.
[3] Obligations.
[4] Estimated.
[5] Source: Fiscal Relations between the U.S. and the District of Columbia, Government Printing Office, 1937.
[6] Prior to 1939 and beginning in 1943, classified under "Transportation and Communication, Federal Works Agency."
[7] In 1939 through 1942 classified under "Social welfare, health, and security, Federal Works Agency."
[8] Prior to 1941 and beginning in 1946 classified under "Transportation and communication, U.S. Maritime Commission," and subsequently under "Commerce and housing, Department of Commerce."
[9] Includes $213,000 expended by Labor Department.
[10] Includes $1,980,000 expended by Labor Department.
[11] Includes $16,000 expended by Labor Department.
[12] Includes $17,000 expended by Labor Department.
[13] Prior to 1947, classified under "Agriculture and agricultural resources, Department of Agriculture."
[14] Omits $19,341,000 included under "Purchases of commodities for distribution through authorized agencies."
[15] Beginning in 1946, classified under "Transportation and communication, Federal Works Agency."
[16] Beginning in 1947, classified under "Social welfare, health, and security."
[17] Revised.
[18] In 1941 through 1945 classified under "National defense, War Shipping Administration."
[19] Prior to 1946 classified under Social Welfare, Health and Security.
[20] Less than $500.
[21] The Federal Security Agency became the Department of Health, Education, and Welfare on Apr. 11, 1953.
[22] Part of a larger appropriation account.
[23] Merged into general category of "Maternal and child welfare."
[24] Part of the estimated expenditures shown may be for loans to local governments and for direct Federal construction of local facilities.

NOTE.—For explanatory comment, see the budget for 1960, Special Analysis G (reprints of pp. 982–988 from the budget). Grant-in-aid data are not available on a consistent functional classification basis for all of the years 1902 to date. The data here presented are from U.S. Bureau of the Budget sources: The years 1902–48 from unpublished documents; the years 1949–62, from the "Special Analysis of Federal Grants-in-Aid to State and Local Governments," contained in the budget documents for the corresponding years. The data for 1958 and subsequent years accord with those published on a State-by-State basis in the annual report of the Secretary of the Treasury.

Source: (1) Supplement to "Expenditures for Federal Grants-in-Aid and Shares Revenues," Bureau of the Budget, for years 1902, 1912, 1920, 1925, and 1929–48 issued on May 2, 1949 (now out of print). (2) The Budget, Special Analysis G, for years 1949 to 1962, inclusive.

SUMMARY OF CURRENT TRENDS IN FEDERAL ASSISTANCE PROGRAMS

Up to this point in my remarks, I have examined in detail the history and development of Federal aid to States and local governments, with special attention to grants-in-aid programs which constitute some 96 percent of total Federal expenditures for aid and assistance.

At the outset of my remarks, I stated that title VI, in its present form, may well undermine, impair and even destroy the vast system of programs by which the Federal Government has been providing financial aid and assistance to State and local governments for more than 100 years. Now, I believe it will be useful to examine current trends in these programs during the past few years, in order to bring home to the American people phenomenal growth and scope of these aid programs.

According to estimates contained in the 1965 budget, Federal financial assistance to some 91,185 State and local governmental jurisdictions, during fiscal year 1965, is expected to total $10.6 billion, as compared with $3.1 billion in fiscal year 1955, only 10 years ago. In this connection, it may be of interest to note that, in 1902, total Federal expenditures for aid to State and local governments amounted to only $7 million, of which $3 million was paid to the States and $4 million to local governing bodies.

I will now address myself to current trends, covering the past 10 years. This will be followed by a tabulation from the official report of the Secretary of the Treasury for the fiscal year ending on June 30, 1963, showing expenditures by the Federal Government as direct payments to the States and within States which provide relief and other aid, through fiscal year 1963. It is arranged according to Federal Departments and agencies, and further broken down as to programs within each Department and agency, and also includes the amounts received by and within each State and territory. This will be followed by a compilation furnished to the chairman of the Committee on the Judiciary of the House of Representatives, at his request, by the Deputy Attorney General, on December 2, 1963, listing, by Department and agency, all of the programs and activities which involve Federal financial assistance and which may be within the scope of title VI, together with preliminary actual expenditures for fiscal year 1963.

FEDERAL AID TO STATE AND LOCAL GOVERNMENTS—CURRENT TRENDS, FISCAL YEAR 1964

Federal aid to State and local governments in recent decades has become a major factor in the cooperative financing of essential Government functions. The rudiments of the present system date back about 100 years to the Civil War with the enactment in 1862 of the Morrill Act, which established the land-grant colleges and instituted certain federally required minimum standards, characteristic of the present grant-in-aid system. Federal aid was later initiated for agriculture, highways, vocational education and rehabilitation, forestry, and public health. In the depression years, Federal aid was extended to meet economic security and other social welfare needs.

In 1964 Federal financial assistance to State and local governments under existing or proposed programs will total an estimated $10.4 billion, including net expenditures of $6.6 billion from regular budget accounts and $3.8 billion from the highway and unemployment trust funds. The total includes $278 million under proposed legislation, of which $215 million is for education. The remainder is for comprehensive maternal and child health services, increased contributions to the District of Columbia, urban transportation assistance, land and water conservation, and hospital construction.

The growth of Federal aid programs: In 10 years, total Federal aid to State and local governments, especially for highways, will have almost quadrupled, rising from $2.7 billion in 1954 to an estimated $10.4 billion in 1964. In the same period, expenditures by State and local governments from their own funds will have more than doubled. Although the number and variety of Federal aid programs have increased markedly in the last several decades, more than 60 percent of total expenditures in 1964 for assistance to State and local governments will be for highway construction and public assistance grants. Over the last decade, highway con-

struction grants have increased more than sixfold, rising from $522 million in 1954 to an estimated $3.4 billion in 1964, the largest increase in Federal aid for any purpose during this period. Grants for public assistance have more than doubled since 1954, increasing from $1.4 billion to an estimated $3 billion in 1964.

Increasing population and rapid urbanization have led to greater responsibility, particularly at the State and local level, for providing essential public services in education, health, housing, urban renewal, highways and public transportation, and the safeguarding of economic security. While the major burden of such public services rests with the 91,185 State and local governmental jurisdictions, the Federal Government has assumed a vital role, both through direct operation of programs and by providing financial assistance to State and local governments.

The task of providing public services can be facilitated though improved intergovernmental cooperation and coordination concerning revenue sources and expenditure programs. The Advisory Commission on Intergovernmental Relations, established in 1959 for this and other purposes, is continuing to make suggestions and recommendations with respect to areas in which intergovernmental action could improve the efficiency of the several levels of government in our Federal system.

Major program increases for 1964: For 1964, the total of budget and trust fund expenditures under existing and proposed programs for financial assistance to other levels of government is expected to be $1 billion more than in 1963 and $2.2 billion larger than the actual total for 1962. The major increases over the 1963 estimate are expected to be in total Federal-aid highway construction, which is estimated to increase by $379 million to $3.4 billion; in public works acceleration for area redevelopment assistance, which is estimated to increase by $168 million to $317 million; in the educational assistance programs, which are estimated to rise by $113 million to a total of $560 million; in public assistance, which will increase by $112 million to a total of $3 billion; in the civil defense program, which will increase by $49 million to a total of $74 million; and in the housing and community development programs, which will rise by $81 million to a total of $693 million. The remaining increase is distributed among other programs including community and environmental health activities, maternal and child health, vocational rehabilitation, waste treatment construction, and school lunch and special milk programs.

New legislation proposed for 1964: Federal aid to State and local governments would be affected by several of the recommendations for legislative change which are provided for in the 1964 budget. A significant increase in 1964 will result from the President's proposed program to assist education at all levels and to continue portions of expiring legislation providing payments to school districts on behalf of children whose parents work on Federal property. A large part of this new education program will be for aid to State and local governments. Because expenditures lag behind authorizations, the amount shown in this analysis is only $215 million in 1964, including $148 million for continuation of the impacted school-aid program.

Among the other recommendations for legislative change for which specific amounts are included in this analysis are: (1) Land and water conservation grants, $8 million; (2) urban transportation assistance grants, $10 million; (3) increased Federal payments to the District of Columbia, $21 million; (4) hospital construction activities, $6 million; and (5) grants for comprehensive maternal and child health services, $17 million.

Federal aid programs by function and agency: In 1964, Federal aid for health, labor and welfare activities will amount to $4.2 billion, slightly more than 40 percent of the total. Programs administered by the Department of Health, Education, and Welfare will account for $3.5 billion of which $3 billion will be for public assistance grants. About 37 percent of total Federal aid, $3.8 billion, will be spent for commerce and transportation activities of which highway construction under the Department of Commerce will account for $3.4 billion. Of the remaining 23 percent, almost four-fifths will be equally distributed among housing and community development, agriculture and agricultural resources and education.

In 1964, Federal-aid budget and trust fund expenditures will be incurred primarily under programs administered by the Department of Health, Education, and Welfare (39 percent) and the Department of Commerce (33 percent). Federal-aid expenditures in 1964 by other agencies will make up the remaining 28 percent of the total, with the largest amounts by the Department of Agriculture (10 percent); the Housing and Home Finance Agency (7 percent); and the Department of Labor (4 percent).

Federal aid in relation to total Federal and State-local outlays: Estimated Federal aid in 1964 to State and local governments from budget accounts alone of $6.6 billion will represent approximately 7 percent of total Federal budget expenditures. Total financial aid from budget and trust accounts of $10.4 billion will represent about 8 percent of estimated total Federal cash payments to the public. As a source of State and local revenue, Federal-aid payments from both trust fund and budget accounts in 1962 was about one-seventh of all general revenue available to these jurisdictions.

Types of Federal aid: Federal financial assistance to State and local governments takes the form of direct grants-in-aid, shared revenue, and net loans and repayable advances. Grants to States are the most significant type of Federal aid. In 1964, it is estimated that $10 billion or 96 percent of total expenditures for all three types of aid will take the form of grants-in-aid. Shared revenue will account for $146 million, or 1.4 percent and net loans and repayable advances, $284 million, or 2.6 percent of the grand total. Apart from these types of Federal aid, many other Federal expenditures affect the finances of State and local governments which are not included in this analysis, such as contractual payments or grants to public institutions for research and training in special fields.

Federal Aid to State and Local Governments—Current Trends, Fiscal Year 1965

Special Analysis I: Federal Aid to State and Local Governments

Federal aid to State and local governments in recent decades has become a major factor in the cooperative financing of essential government functions. The rudiments of the present system date back about 100 years to the enactment in 1862 of the Morrill Act, which established land-grant colleges and instituted certain federally required minimum standards characteristic of the present grant-in-aid system. Federal aid was later initiated for agriculture, highways, vocational education and rehabilitation, forestry, and public health. In the depression years, Federal aid was extended to meet economic security and other social welfare needs.

In 1965 Federal financial assistance to State and local governments under existing or proposed programs will total an estimated $10.6 billion, including net expenditures of $6.5 billion from regular budget accounts and $4 billion from the highway and unemployment trust funds. The total includes $188 million under proposed legislation, of which $70 million is for education, $55 million is for youth employment programs, and the remaining $63 million is for community work-training, increased contributions to the District of Columbia, urban transportation assistance, recreation planning and land acquisition, and hospital construction.

The growth of Federal aid programs: In 10 years, total Federal aid to State and local governments will have more than tripled, rising from $3.1 billion in 1955 to an estimated $10.6 billion in 1965. In the same period, expenditures by State and local governments from their own funds will have more than doubled. Although the number and variety of Federal aid programs have increased markedly in the last several decades, more than 60 percent of total expenditures in 1965 for assistance to State and local governments will be for highway construction and public assistance grants. In the decade ending in 1965, highway construction grants will have increased more than sixfold, rising from $586 million in 1955 to an estimated $3.6 billion in 1965, the largest increase in Federal aid for any purpose during this period. Grants for public assistance will have doubled since 1955, increasing from $1.4 billion to an estimated $2.8 billion in 1965.

Increasing population and rapid urbanization have led to greater responsibility, particularly at the State and local level, for providing essential public services in education, health, housing, urban renewal, highways and public transportation. Continuing economic change has stimulated programs for safeguarding the economic security of individuals. While the major burden of such public services rests with the approximately 90,000 State and local governmental jurisdictions, the Federal Government plays a vital role, both through direct operation of programs and by providing financial assistance to State and local governments.

The provision of public services can be facilitated through improved intergovernmental cooperation and coordination concerning revenue sources and expenditure programs. The Advisory Commission on Intergovernmental Relations, established in 1959 for this and other purposes, is continuing to make valuable contributions in identifying areas in which interlevel action could improve the efficiency of the several levels of government in our Federal system.

Major program changes for 1965: For 1965, the total of budget and trust fund expenditures under existing and proposed programs for financial assistance to other levels of government is expected to be $391 million more than in 1964 and $1.8 billion more than the actual total for 1963. This change reflects both significant increases and decreases in several of the grant-in-aid programs. The major increases over the 1964 estimate are expected to be in the educational assistance programs which are estimated to rise by $213 million to a total of $798 million reflecting recently enacted higher and vocational education bills and proposed new legislation; in the housing and community development programs which will rise by $190 million to a total of $705 million; and in total Federal aid to highway construction which is estimated to increase by $94 million to $3.6 billion. Smaller increases will occur in other programs including employment service, school lunch, environmental health, and maternal and child welfare programs.

Significant decreases in 1965 are expected to occur (1) in the distribution of surplus

food commodities which will decline by $75 million, (2) in accelerated public works which will decline by $17 million and (3) in public assistance, where a decline in expenditures of $132 million will be offset by a drawing down of cash balances held by the States, so that obligations in 1965 will continue to increase. Smaller decreases occur in national defense, disaster relief, and community health programs, and in special grants to Alaska.

New legislation proposed for 1965: Federal aid to State and local governments will be affected by several of the recommendations for legislative changes which are provided for in the 1965 budget. A large part of the $718 million in total new obligational authority requested for education legislation will be for aid to State and local governments. Because expenditures lag behind authorizations, however, it is expected that there will be only $70 million in expenditures for grants-in-aid in 1965. Grants under the Youth Employment Act, pending in Congress, are estimated to be $55 million in 1965.

Among the other recommendations for legislative change for which specific amounts are included in this analysis are: (1) Recreation planning and land acquisition, $9 million; (2) urban transportation assistance grants, $10 million; (3) increased Federal payments to the District of Columbia, $5 million; (4) hospital construction activities, $5 million; and (5) community work-training programs, $35 million.

Federal aid programs by function and agency: In 1965, Federal aid for health, labor, and welfare activities will amount to $4.2 billion, 40 percent of the total. Of this amount $3.4 billion, including $2.8 billion for public assistance grants, will be for programs administered by the Department of Health, Education, and Welfare. About 38 percent of total Federal aid, or $4 billion, will be spent for commerce and transportation activities of which highway construction under the Department of Commerce will account for $3.6 billion. Most of the remaining 22 percent will be distributed among education, 8 percent, housing and community development, 7 percent, and agriculture and agricultural resources, 5 percent. The detailed table at the end of this analysis lists the various programs of Federal aid to State and local governments by function, type of aid, agency, and major program groups.

TABLE I–1.—*Federal aid budget and trust fund expenditures by agency*

[In millions of dollars]

Agency	1963 actual	1964 estimate	1965 estimate
Executive Office of the President	----------	0.4	1.5
Funds appropriated to the President	48.7	298.3	266.0
Department of Agriculture	848.3	979.0	916.2
Department of Commerce	3,028.3	3,570.4	3,668.1
Department of Defense—Military	40.5	42.5	37.0
Department of Defense—Civil	18.6	18.0	16.5
Department of Health, Education, and Welfare	3,628.9	3,967.0	4,086.7
Department of the Interior	138.8	145.8	154.0
Department of Labor	330.4	408.5	487.0
Department of State	7.3	5.6	5.6
Treasury Department	58.1	58.7	61.0
Federal Aviation Agency	51.5	75.3	75.7
General Services Administration	.1	1.5	2.0
Housing and Home Finance Agency	502.6	525.7	688.5
Veterans' Administration	8.2	8.3	7.9
Other independent offices	7.7	8.6	8.9
District of Columbia [1]	62.7	63.2	85.2
Total, budget and trust fund expenditures for Federal aid	8,780.7	10,177.0	10,567.7

[1] Represents Federal payments, contributions, and loans to the District of Columbia for operations and capital improvements.

In 1965, Federal aid budget and trust fund expenditures will be incurred primarily under programs administered by the Department of Health, Education, and Welfare, 39 percent; and the Department of Commerce, 35 percent. Federal-aid expenditures by other agencies will make up the remaining 26 percent of the total, with the largest amounts by the Department of Agriculture, 9 percent; the Housing and Home Finance Agency, 7 percent; and the Department of Labor, 5 percent.

Federal aid in relation to total Federal and State-local outlays: Estimated Federal aid in 1965 to State and local governments from budget accounts alone of $6.5 billion will represent approximately 7 percent of total Federal budget expenditures. Total financial aid from budget and trust accounts of $10.6 billion will represent about 9 percent of estimated total Federal cash payments to the public. As a source of State and local revenue, Federal-aid payments from both trust fund and budget accounts in 1963 was about one-seventh of all general revenue available to these jurisdictions.

TABLE I–2.—*Federal-aid expenditures in relation to total Federal expenditures and to State-local revenue*

	Net budget expenditures for aid to State and local governments		Total expenditures for aid to State and local governments, budget and trust accounts.		
	Amount (millions)	As a percent of total Federal administrative budget expenditures	Amount (millions)	As a percent of total cash payments to the public	As a percent of State-local revenue [1]
1954	2,657	4	2,657	4	10
1955	3,124	5	3,124	4	11
1956	3,753	6	3,753	5	12
1957	3,159	5	4,111	5	11
1958	3,576	5	5,072	6	12
1959	4,012	5	6,813	7	15
1960	4,259	6	7,174	8	14
1961	4,326	5	7,283	7	13
1962	4,966	6	8,167	8	14
1963	5,453	6	8,781	8	14
1964 estimate	6,252	6	10,177	8	[2]
1965 estimate	6,520	7	10,568	9	[2]

[1] Based on compilations published by Governments Division, Bureau of the Census. Excludes State-local revenue from publicly operated utilities, liquor stores, and insurance trust systems.
[2] Not available.

Types of Federal aid: Federal financial assistance to State and local governments takes the form of direct grants-in-aid, shared revenue, and net loans and repayable advances. Grants to States and localities are the most significant type of Federal aid. In 1965, it is estimated that $10.2 billion or 96 percent of total expenditures for all three types of aid will take the form of grants-in-aid. Shared revenue will account for $183 million, or 1.7 percent, and net loans and repayable advances, $203 million, or 1.9 percent of the grand total. Apart from these types of Federal aid, many other Federal expenditures which are not included in this analysis, such as contractual payments or grants to public institutions for research and training in special fields, affect the finances of State and local governments.

TABLE I–3.—*Federal aid to State and local governments*

[In millions of dollars]

Agency and program	Functional code	1963 actual	1964 estimate	1965 estimate
BUDGET ACCOUNTS [1]				
GRANTS-IN-AID				
National defense:				
Executive Office of the President, Office of Emergency Planning: Federal contributions and State and local planning	059	----------	0.4	1.5
Department of Defense—Military: Civil defense shelters and financial assistance	051	21.3	27.5	27.0
Construction of Army National Guard centers	051	19.2	15.0	10.0
Total, national defense	------	40.4	42.9	38.5
International affairs and finance:				
Department of State: East-West Cultural and Technical Interchange Center	153	7.3	5.6	5.6
Agriculture and agricultural resources:				
Department of Agriculture:				
Commodity Credit Corporation and Agricultural Marketing Service: Removal of surplus agricultural commodities and value of commodities donated	351	353.5	416.2	340.8
Watershed protection, flood prevention, and resource conservation and development	354	57.5	57.4	59.6
Cooperative agricultural extension work	355	72.0	77.4	75.1
Agricultural experiment stations	355	37.0	40.2	41.2
Payments to States, territories, and possessions, Agricultural Marketing Service	355	1.4	1.5	1.4
Total, agriculture and agricultural resources	------	521.4	592.7	518.2
Natural resources:				
Department of Agriculture: Forest protection and utilization	402	16.0	28.5	17.6
Department of Defense—Civil: Corps of Engineers: Payment to California, flood control	401	17.0	8.4	12.4
Department of the Interior:				
Bureau of Reclamation: Disposal of Boulder City and Coulee Dam communities	401	.1	.2	----------
Bureau of Indian Affairs: Resources management	401	.7	.8	.8
Drainage of anthracite mines	403	*	.2	.4
Federal aid for fish and wildlife restoration	404	20.0	17.2	20.0

BUDGET ACCOUNTS—Continued

GRANTS-IN-AID—continued

Agri. and agricultural resources—Con.

Department of Agriculture—Con.

See footnotes at end of table.

TABLE I-3.—*Federal aid to State and local governments*—Continued

[In millions of dollars]

Agency and program	Functional code	1963 actual	1964 estimate	1965 estimate
BUDGET ACCOUNTS—Continued				
GRANTS-IN-AID—continued				
Natural resources—Continued				
Department of the Interior—Con.				
Proposed legislation: Land and water conservation fund: Recreation planning and land acquisition	405	----------	----------	8.8
Total, natural resources	------	53.9	55.2	60.0
Commerce and transportation:				
Funds appropriated to the President:				
Public works acceleration	507	15.1	260.8	243.5
Department of Commerce:				
State marine schools	502	.4	.4	.4
Forest and public lands highways	503	38.6	39.6	39.9
Control of outdoor advertising	503	----------	2.0	----------
Area redevelopment assistance	507	2.9	10.0	11.0
Federal Aviation Agency: Federal-aid airport program	501	51.5	75.3	75.7
Small Business Administration: Research and management counseling	506	.2	.3	----------
Total, commerce and transportation	------	108.6	388.4	370.5
Housing and community development:				
Housing and Home Finance Agency:				
Low-income housing demonstration program	551	.1	2.0	3.0
Low-rent public housing program	552	170.3	191.0	208.2
Urban renewal and planning	553	199.3	252.0	331.6
Proposed legislation: Urban transportation assistance	553	----------	----------	9.6
Open space program	553	(*)	8.7	14.6
National Capital Planning Commission:				
Acquisition of lands in Maryland	555	.2	----------	----------
District of Columbia:				
Federal payment and contribution	555	30.3	37.5	50.0
Proposed legislation: Increased payments	555	----------	----------	4.8
Total, housing and community development	------	400.2	491.3	621.9
Health, labor, and welfare:				
Funds appropriated to the President:				
Disaster relief	655	30.5	34.5	22.4
Department of Agriculture: School lunch, special milk, and food stamp programs	655	281.1	320.1	339.2
Department of Health, Education, and Welfare:				
Hospital construction activities	651	182.5	190.1	192.0
Proposed legislation: Hospital construction activities	651	----------	----------	5.0
Portion to private, nonprofit institutions [2]	651	(113.0)	(114.0)	(119.0)
Construction of waste treatment facilities	651	51.7	75.0	75.0
Community health activities	651	34.5	50.2	41.4
Environmental health grants	651	5.8	6.3	13.0
National Institutes of Health:				
Operating grants	651	18.7	10.0	10.0
Mental health facilities	651	----------	----------	3.0
Maternal and child welfare	651	73.4	94.0	116.0
Mental health facilities, Alaska	651	.3	.2	----------
Hospital and medical care, Hawaii	651	1.5	1.2	1.2
Indian health facilities	651	.3	----------	----------
Public assistance	653	2,729.6	2,947.6	2,781.0
Proposed legislation for community work-training	653	----------	----------	35.0
Vocational rehabilitation	655	73.2	89.5	93.2
Department of Labor: Proposed legislation for youth employment opportunities	652	----------	5.0	55.0
Total, health, labor, and welfare	------	3,483.0	3,823.5	3,782.5
Education:				
Department of Health, Education, and Welfare:				
Assistance to schools in federally affected areas	701	330.0	339.1	386.6
Defense educational activities:				
Assistance for elementary and secondary education	701	48.1	60.6	74.8
Other aid to education	704	14.9	16.9	17.0
Higher education construction	------	----------	2.0	26.1
Assistance to land-grant colleges	702	14.5	14.5	14.5
Vocational education	704	41.5	57.1	108.4
Grants for library services	704	7.3	7.5	7.5
Teaching of the blind	704	.7	.7	.8
Training teachers of the handicapped	704	.5	.9	3.8
Educational television facilities	704	----------	1.9	4.8
Proposed education legislation	700	----------	1.5	69.9
Department of the Interior: Bureau of Indian Affairs: Education and welfare services	704	7.7	8.6	9.1
Total, education	------	465.2	511.3	723.3
Veterans benefits and services:				
Veterans Administration:				
Aid to State homes	804	7.4	7.5	7.5
State supervision of schools and training establishments	805	.9	.8	.5
Total, veterans benefits and services	------	8.2	8.3	7.9
General government:				
Funds appropriated to the President:				
Transitional grants to Alaska	910	3.1	3.0	----------
Department of the Interior: Grants to territories and Alaska public works	910	22.3	29.3	18.4
General Services Administration: Hospital facilities in the District of Columbia	905	.1	1.5	2.0
Total, general government	------	25.5	33.8	20.5
Total, grants-in-aid	------	5,113.8	5,953.0	6,148.9
SHARED REVENUE				
Natural resources:				
Department of Agriculture: National forest and grassland funds, payments to States and counties	402	27.8	30.7	31.8
Department of Defense—Civil: Corps of Engineers: Flood Control Act of 1954 payments	401	1.6	1.7	1.8
Department of the Interior:				
Payments to States and counties from grazing receipts, sales of public lands and proceeds, and national grasslands	401	.7	1.0	1.1
Boulder Canyon project, payments to Arizona and Nevada	401	.6	.6	.6
Oregon and California land-grant fund payments	402	15.4	15.0	18.0
Payments to Coos and Douglas Counties, Oreg.	402	.7	.3	(*)
Mineral Leasing Act payments	403	47.1	47.6	49.3
Payments to counties, Migratory Bird Conservation Act and national grasslands, and payments to Alaska, Alaska game law and Pribilof Islands fund	404	1.3	1.2	2.2
Tennessee Valley Authority: Payments in lieu of taxes	401	7.3	8.2	8.8
Miscellaneous shared revenue	400	.1	.1	.1
Total, natural resources	------	102.7	106.5	113.7
General government:				
Department of the Interior: Internal revenue collections: Virgin Islands	910	7.7	7.0	8.0
Treasury Department: Tax collections for Puerto Rico	910	44.8	45.1	47.0
Total, general government	------	52.5	52.1	55.0
Total, shared revenue	------	155.2	158.6	168.7
LOANS AND REPAYABLE ADVANCES (NET)				
Agriculture and agricultural resources:				
Department of Agriculture:				
Rural renewal	352	----------	1.0	1.8
Watershed protection, flood prevention, and resource conservation and development	354	1.9	6.1	7.6
Total, agriculture and agricultural resources	------	1.9	7.0	9.4
Natural resources:				
Department of the Interior: Irrigation projects	401	14.3	14.7	14.5
Commerce and transportation:				
Department of Commerce: Area redevelopment	507	2.5	11.2	15.6
Housing and community development:				
Housing and Home Finance Agency:				
Liquidating programs: Community facilities loans	551	−1.3	−1.0	−1.4
Low-rent public housing program	552	−3.4	−56.3	.2
Public facilities	553	29.8	33.7	31.1
Public works planning	553	5.9	3.5	5.2
Urban renewal fund	553	−13.2	18.0	18.0
District of Columbia: Capital outlays and operations	555	32.4	25.7	30.4
Total, housing and community development	------	50.1	23.6	83.5

See footnotes at end of table.

TABLE I-3.—*Federal aid to State and local governments*—Continued

[In millions of dollars]

Agency and program	Functional code	1963 actual	1964 estimate	1965 estimate
BUDGET ACCOUNTS [1]—Continued				
LOANS AND REPAYABLE ADVANCES (NET)—continued				
Education:				
Housing and Home Finance Agency: College housing	702	115.0	74.0	68.3
Department of Health, Education, and Welfare: Higher education construction	700	----------	.3	6.6
Total, education	------	115.0	74.3	74.9
General government:				
Department of Defense—Civil: Corps of Engineers: Construction of power systems, Ryukyu Islands	910	----------	7.9	2.2
Department of the Interior: Alaska public works	910	----------	2.0	2.9
Total, general government	------	----------	9.9	5.1
Total, loans and repayable advances	------	184.0	140.8	202.9
Total, net budget expenditures	------	5,453.0	6,252.4	6,520.5
TRUST FUNDS				
GRANTS-IN-AID				
Commerce and transportation:				
Department of Commerce: Highway trust fund: Federal-aid highway program	503	2,984.0	3,507.2	3,601.2
Health, labor and welfare:				
Department of Labor: Unemployment trust fund: Administration of employment security programs	652	330.4	403.5	432.0
Total, grants-in-aid	------	3,314.4	3,910.7	4,033.2
SHARED REVENUE				
General government:				
Treasury Department: Bureau of Customs: refunds, transfers, and expenses of operation, Puerto Rico and the Virgin Islands	904	13.3	13.6	14.0
Total, shared revenue	------	13.3	13.6	14.0
Total trust fund	------	3,327.7	3,924.3	4,047.2
Total, budget and trust fund expenditures for Federal aid [3]	------	8,780.6	10,176.7	10,567.7

*Less than $50,000.

[1] Many expenditures listed under budget accounts and trust funds are part of larger appropriation accounts or trust accounts.

[2] In 1965, $3,000,000 of this amount is contained under proposed legislation above.

[3] The amount in 1963 for grants-in-aid and shared revenue from budget and trust accounts in this analysis is identical with the $8,596,700,000 distributed by States in the 1963 Annual Report of the Secretary of the Treasury, table 95, pt. A, "Federal Aid Payments to State and Local Units."

NOTE.—Detail will not necessarily add to totals because of rounding.

This is a corrected galley proof which will appear in the Annual Report of the Secretary of the Treasury on the State of the Finances for the Fiscal Year Ended June 30, 1963.

FEDERAL AID TO STATES

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*

[On basis of checks issued except where it is not practicable to report certain detail for all payments. The differing basis of such detail is footnoted and a checks-issued figure is used for the total. The differences in amounts between the two bases are included in "undistributed to States, etc."]

PART A. FEDERAL AID PAYMENTS TO STATES AND LOCAL UNITS

States, territories, etc.	Department of Agriculture						
	Agricultural experiment stations [1] (1)	Cooperative agricultural extension work [2] (2)	School lunch program [3] (3)	National forests fund [4]—shared revenues (4)	National grasslands—shared revenues [5] (5)	Cooperative projects in marketing [6] (6)	State and private forestry cooperation, etc.[7] [8] (7)
Alabama	$1,005,213	$2,184,631	$4,700,748	$214,193	----------	$57,334	$449,055
Alaska	241,388	144,628	129,104	171,592	----------	21,050	56,635
Arizona	450,448	393,361	1,376,761	409,682	----------	11,417	----------
Arkansas	811,935	1,761,880	2,674,057	712,392	$1,406	42,070	404,955
California	1,074,071	1,611,224	9,093,107	3,140,688	510	155,958	1,204,705
Colorado	559,164	655,792	1,586,364	194,999	22,788	49,319	73,082
Connecticut	408,230	345,662	1,541,466	----------	----------	14,959	116,207
Delaware	309,151	173,195	302,087	----------	----------	27,267	18,712
District of Columbia	----------	----------	258,194	----------	----------	----------	----------
Florida	539,600	767,578	5,384,651	236,983	6,603	99,112	772,209
Georgia	1,072,999	2,274,300	5,893,960	258,450	----------	101,113	1,148,717
Hawaii	338,549	288,028	943,678	----------	----------	29,900	64,889
Idaho	440,748	509,407	819,599	1,063,435	2,754	9,030	313,030
Illinois	975,004	1,926,757	6,269,111	14,923	----------	61,711	130,092
Indiana	903,119	1,609,201	4,181,444	6,167	----------	110,836	60,929
Iowa	987,204	1,717,769	3,043,558	147	125	93,947	64,248
Kansas	690,621	1,186,890	2,063,931	----------	21,098	125,478	28,334
Kentucky	1,010,054	2,177,742	4,339,648	70,615	625	108,753	329,388
Louisiana	711,195	1,424,469	5,977,667	207,874	263	110,165	506,852
Maine	419,341	426,907	945,316	5,787	----------	97,623	462,019
Maryland	522,395	606,681	2,377,333	----------	1,977	78,705	221,238
Massachusetts	504,606	479,024	3,622,685	----------	----------	66,768	182,666
Michigan	924,315	1,819,299	5,675,786	145,650	4,461	232,083	739,559
Minnesota	862,230	1,643,051	3,722,718	254,750	----------	73,998	569,545
Mississippi	996,398	2,245,716	3,893,192	715,054	−1,878	104,016	548,166
Missouri	921,723	1,974,772	3,944,130	62,791	757	162,050	196,373
Montana	447,429	555,908	643,974	865,119	----------	25,149	189,053
Nebraska	625,655	997,162	1,221,819	19,455	8,603	29,900	22,000
Nevada	299,508	207,065	159,252	40,713	----------	----------	62,896
New Hampshire	341,508	233,646	499,792	73,490	----------	6,685	149,974
New Jersey	513,047	468,172	3,021,789	----------	----------	75,737	177,374
New Mexico	390,063	483,308	1,113,033	132,698	11,123	50,725	101,616
New York	1,117,343	1,687,499	10,537,654	----------	682	144,052	567,220
North Carolina	1,389,470	3,003,246	6,947,668	143,163	----------	144,663	542,768
North Dakota	448,445	724,405	862,903	48	207,280	65,172	38,781
Ohio	1,139,242	2,186,375	7,451,059	5,850	1,628	55,738	226,705
Oklahoma	730,313	1,474,407	2,445,003	97,012	6,570	88,544	179,160
Oregon	607,596	679,296	1,641,669	12,092,170	2,768	93,566	729,623

Footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

[On basis of checks issued except where it is not practicable to report certain detail for all payments The differing basis of such detail is footnoted and a checks-issued figure is used for the total. The differences in amounts between the two bases are included in "undistributed to States, etc."]

PART A. FEDERAL AID PAYMENTS TO STATES AND LOCAL UNITS—Continued

States, territories, etc.	Department of Agriculture						
	Agricultural experiment stations [1]	Cooperative agricultural extension work [2]	School lunch program [3]	National forests fund [4]—shared revenues	National grasslands—shared revenues [5]	Cooperative projects in marketing [6]	State and private forestry cooperation, etc.[7]
	(1)	(2)	(3)	(4)	(5)	(6)	(7) [8]
Pennsylvania	$1,209,577	$2,200,509	$8,409,262	$192,483		$47,967	$343,645
Rhode Island	320,493	126,102	512,003			4,060	62,042
South Carolina	795,808	1,601,341	4,097,531	502,469	$696	29,250	530,889
South Dakota	473,448	701,988	677,350	39,841	45,932	19,950	63,158
Tennessee	1,023,541	2,210,131	4,743,241	91,193		57,000	419,506
Texas	1,388,217	3,561,258	8,854,077	317,921	22,304	54,915	493,915
Utah	419,184	399,990	1,187,880	120,280		24,971	63,245
Vermont	334,190	289,830	356,894	69,622		22,072	128,594
Virginia	900,522	1,809,989	4,317,734	60,983	55	88,101	550,309
Washington	710,301	836,791	2,447,830	4,366,747		70,459	838,904
West Virginia	684,937	1,117,522	2,249,386	109,504		48,818	232,033
Wisconsin	923,883	1,673,452	3,356,125	91,884	1	61,640	660,293
Wyoming	360,425	329,151	333,992	118,098	23,744	5,230	39,653
Puerto Rico	936,697	1,490,741	4,656,904	2,174	214		
Virgin Islands			95,428				
Other territories, etc.[9]			94,861				
Undistributed to States, etc.	[9] 250,000	[10] 9,166,743	40,623	1,879	585		−26,475
Total	36,460,543	70,563,991	167,737,031	27,440,968	393,674	3,359,026	16,048,486

States, territories, etc.	Department of Agriculture					Department of Commerce	
	Watershed protection and flood prevention [11]	Special milk program [12]	Removal of surplus agricultural commodities		Commodity Credit Corporation	Bureau of Public Roads—construction	
			Food stamp program [5 13]	Value of commodities distributed	Value of commodities donated [5 14]	Federal-aid highways (trust fund) [15]	Other [5 16]
	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Alabama	$653,002	$1,437,505	$385,204	$2,934,862	$7,715,272	$40,484,565	$93,699
Alaska		34,582		36,327	226,065	21,683,952	3,348,184
Arizona	1,013,357	637,425		1,067,214	1,856,713	43,904,853	2,366,664
Arkansas	1,522,381	772,294	15,618	2,669,874	7,296,326	37,721,083	314,055
California	5,191,706	8,780,203	22,892	2,257,678	9,007,993	252,036,100	4,253,184
Colorado	651,929	862,145		974,748	2,547,456	38,159,445	3,112,916
Connecticut	628,094	1,419,635		332,500	1,387,064	28,665,692	
Delaware	193,229	305,883		263,549	746,924	13,850,637	
District of Columbia		531,180		572,367	1,209,421	31,161,882	
Florida	453,964	1,213,879		1,839,455	4,783,864	53,416,628	258,524
Georgia	1,781,686	1,163,125		1,459,633	5,661,401	63,438,228	378,221
Hawaii	374,117	184,938		252,630	531,242	5,951,706	
Idaho	44,400	226,725		232,323	675,315	24,385,297	3,955,257
Illinois	140,638	6,729,327	290,417	2,725,905	8,597,512	160,846,123	105,775
Indiana	722,224	2,277,390	70,000	1,946,884	4,664,201	73,147,972	4,843
Iowa	1,695,303	1,823,975		1,835,427	4,077,287	34,056,118	
Kansas	1,696,768	1,073,009	608	908,559	2,373,780	27,421,917	
Kentucky	1,170,799	1,751,446	1,336,556	3,809,717	9,481,011	66,080,009	95,860
Louisiana	302,538	756,718	649,464	3,263,280	8,703,161	75,093,165	57,280
Maine	21,050	449,762		618,045	1,608,656	20,156,808	37,710
Maryland	437,869	2,045,074		991,159	2,613,354	37,656,126	
Massachusetts	406,927	3,324,780		872,748	3,193,792	53,053,645	
Michigan	134,143	5,737,380	6,354,426	4,395,621	10,947,127	121,114,691	622,093
Minnesota	536,379	2,585,648	630,808	1,346,773	3,685,812	63,755,112	478,847
Mississippi	3,761,946	1,378,887		3,365,233	9,188,836	39,236,016	185,975
Missouri	704,305	2,904,041	302,660	1,839,691	5,810,410	78,959,926	305,70
Montana	60,757	192,742	113,938	265,499	766,437	39,352,839	3,067,203
Nebraska	491,622	613,700		290,822	758,467	38,413,658	
Nevada	189,995	99,582		48,265	182,303	17,231,331	311,632
New Hampshire	233,834	372,848		207,188	746,359	13,488,017	592,560
New Jersey	187,625	3,065,405		815,807	2,413,191	67,122,500	
New Mexico	855,296	789,396	329,378	1,164,554	3,482,253	33,591,035	1,677,832
New York	713,069	8,990,760		8,643,275	21,716,735	162,658,537	
North Carolina	669,432	2,076,197	210,456	2,832,825	6,855,191	38,085,086	184,393
North Dakota	333,428	392,904		236,930	798,562	17,102,316	337
Ohio	216,500	5,573,564	1,197,105	3,997,725	9,714,776	171,811,261	98,333
Oklahoma	9,317,665	1,021,016		3,981,542	9,790,916	34,829,210	11,435
Oregon	585,108	516,858	300,942	1,061,034	2,498,757	58,901,047	4,924,255
Pennsylvania	1,094,124	4,580,992	3,974,460	8,733,916	21,594,975	137,152,155	114,600
Rhode Island		391,341		194,993	528,339	15,141,608	
South Carolina	309,103	767,206		637,053	2,465,708	26,960,317	88,241
South Dakota	175,383	425,110		461,725	1,215,414	22,426,694	259,972
Tennessee	1,574,475	2,146,750	51,745	2,624,403	7,595,070	98,302,771	6,851
Texas	10,979,285	3,854,418		3,257,665	9,914,692	164,533,100	146,600
Utah	569,345	341,868		514,142	1,460,904	33,087,784	1,451,280
Vermont		211,403		285,096	645,101	18,197,795	−172,603
Virginia	823,606	1,693,932	314,146	989,720	4,172,756	91,947,026	312,808
Washington	1,948,121	1,548,632		1,953,450	4,731,716	58,620,588	2,959,330
West Virginia	924,830	537,877	2,011,542	2,834,548	8,648,785	17,761,269	189,077
Wisconsin	765,799	3,513,366	77,558	1,607,725	4,093,334	58,073,218	152,097
Wyoming	192,810	154,901		194,739	544,285	36,744,122	2,147,301
Puerto Rico	46,340			5,020,968	11,999,824	6,245,456	7,150
Virgin Islands				30,650	121,086		
Other territories, etc.[5]				110,651	559,102		
Undistributed to States, etc.		402,910	−52	5,835,518	−6,767,235	769,720	56,205
Total	57,496,306	94,682,634	18,639,871	101,644,630	251,837,798	2,983,988,155	38,561,680

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART A. FEDERAL AID PAYMENTS TO STATES AND LOCAL UNITS—Continued

States, territories, etc.	Department of Commerce		Department of Defense [19]			Funds appropriated to the President [19]	
			Army		Civil defense	Disaster relief [3]	Accelerated public works program [2 20]
	Area redevelopment assistance [17]	State marine schools [18]	Lease of flood control lands—shared revenues	National Guard			
	(15)	(16)	(17)	(18)	(19)	(20)	(21)
Alabama	$21,000		$2,548	$717,196	$301,890	$1,003	$855,173
Alaska				79,689	56,884		679,813
Arizona			19	71,756	163,776		
Arkansas	110,000		83,630	99,370	463,522	−21,458	115,686
California		$75,000	84,269	830,736	2,296,501	1,005,183	1,258,306
Colorado			11,044	144,446	447,026		235,573
Connecticut			149	46,731	280,147	−45,197	627,431
Delaware			5,303		59,766	2,824,438	
District of Columbia					86,843		
Florida			8,139	274,662	334,165	102,797	1,129,960
Georgia	130,000		49,362	1,420,968	413,249		350,387
Hawaii				207,286	341,111		
Idaho			78	191,704	92,555	238,678	32,425
Illinois	5,848		80,167		457,609	218,389	252,703
Indiana			1,077	303,999	282,123	132,738	6,938
Iowa			54,156	116,097	123,184	554,746	
Kansas			97,436	159,107	129,479		4,875
Kentucky	321,000		102,422	486,966	150,584	447,097	603,018
Louisiana			29,724	745,123	551,585	19,507	283,478
Maine		75,000		191,463	629,799		
Maryland	183,000		558	10,373	466,420	1,933,321	
Massachusetts	191,000	75,000	3,078	384,339	586,019		343,971
Michigan			1,788	1,095,217	714,201		915,106
Minnesota			1,446	584,728	398,217		185,779
Mississippi	50,000		105,932	1,590,555	153,546	912,500	513,192
Missouri			86,778	378,670	323,165	52,033	28,125
Montana			6,512	285,462	55,624		
Nebraska			44,167	149,219	154,521	74,535	
Nevada				111,923	79,668	288,063	
New Hampshire			2,023	39,376	64,489		133,590
New Jersey			1,371	396,920	554,516	8,031,366	411,000
New Mexico				323,217	68,404		238,654
New York	25,000	75,000	1,920	617,893	4,275,679	2,447,693	579,800
North Carolina			2,833	942,638	411,198	358,887	867,429
North Dakota			168,737	134,001	273,934		
Ohio			3,944	30,960	262,745	−8,366	372,304
Oklahoma	761,100		271,722	11,126	591,081		531,978
Oregon			11,362	147,013	169,853	898,399	385,909
Pennsylvania	357,700		9,378	580,715	1,075,622		423,255
Rhode Island				12,871	177,875		37,625
South Carolina	100,000		1,173	881,665	214,411		350,646
South Dakota			37,165	292,675	68,460	76,920	
Tennessee	244,315		37,023	617,120	202,834		1,271,997
Texas	179,000	75,000	180,107	679,888	588,105	3,685,738	132,625
Utah				219,313	86,993		43,625
Vermont			435	129,342	53,143		
Virginia	16,000		13,764	181,975	286,002	2,747,684	
Washington			5,235	148,213	402,725	855,809	364,468
West Virginia	99,250		898	841,268	91,715	658,961	266,647
Wisconsin	58,500		4,886	699,291	621,761		142,118
Wyoming				234,405	53,562		40,925
Puerto Rico				323,470	48,797		123,110
Virgin Islands					15,732		
Other territories, etc.[5]						2,000,000	
Undistributed to States, etc.							−1,662
Total	2,852,713	375,000	1,613,757	19,163,140	21,252,816	30,491,463	15,137,980

States, territories, etc.	Department of Health, Education, and Welfare [10]						
	Office of Education						
	Colleges of agriculture and mechanical arts [21]	Cooperative vocational education [23]	Assistance for school construction	Maintenance and operation of schools	Library services	Defense education activities [3]	Expansion of teaching in education of the mentally retarded
	(22)	(23)	(24)	(25)	(26)	(27)	(28)
Alabama	$277,647	$928,568	$669,030	$5,804,722	$184,761	$528,711	$11,800
Alaska	205,376	103,334	650,647	8,300,302	39,217	119,246	
Arizona	230,951	246,448	1,293,364	5,484,907	72,538	236,184	7,333
Arkansas	242,458	645,941	507,855	1,699,354	140,200	688,806	12,600
California	573,580	2,355,655	9,647,345	49,611,477	250,030	5,630,200	8,342
Colorado	241,689	380,069	1,507,471	7,593,341	85,259	430,038	12,200
Connecticut	260,260	410,918	1,471,462	2,507,741	71,325	1,166,114	9,339
Delaware	210,608	188,862		787,474	61,374	204,844	6,100
District of Columbia		120,339				177,002	
Florida	317,693	873,648	2,127,875	7,325,249	166,620	2,058,271	11,000
Georgia	293,723	1,069,771	1,071,530	6,715,418	177,556	1,481,900	12,600
Hawaii	215,040	193,015	1,334,600	5,442,358	54,606	206,701	12,200
Idaho	215,858	277,466	782,373	2,016,720	74,029	374,755	13,000
Illinois	439,618	1,874,208	220,995	5,081,456	224,456	3,065,914	11,000
Indiana	310,822	1,144,520	42,647	1,376,905	211,978	1,641,484	12,600
Iowa	265,544	1,019,981	14,023	1,055,233	167,096	1,428,807	14,200
Kansas	251,783	607,185	477,064	6,712,877	76,454	1,291,901	13,400
Kentucky	272,214	1,004,891	33,000	1,519,719	202,339	1,325,270	9,800
Louisiana	277,416	799,165	68,908	1,330,830	157,418	686,117	11,800
Maine	223,038	253,829	103,171	2,267,537	86,338	438,354	11,985
Maryland	273,700	505,819	1,775,671	11,029,662	122,837	1,215,198	11,800
Massachusetts	322,376	733,102	1,674,274	8,331,990	92,618	1,563,844	11,400

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART A. FEDERAL AID PAYMENTS TO STATES AND LOCAL UNITS—Continued

States, territories, etc.	Department of Health, Education, and Welfare [9] — Office of Education						
	Colleges of agriculture and mechanical arts [21] (22)	Cooperative vocational education [22] (23)	Assistance for school construction (24)	Maintenance and operation of schools (25)	Library services (26)	Defense education activities [3] (27)	Expansion of teaching in education of the mentally retarded (28)
Michigan	$385,949	$1,592,020	$2,371,679	$2,387,147	$244,534	$1,189,820	$12,600
Minnesota	281,144	1,069,346	142,454	610,160	160,904	1,760,803	12,600
Mississippi	251,772	890,013	132,998	1,508,537	173,211	719,773	12,200
Missouri	302,677	1,149,932	454,179	3,126,435	181,644	613,082	10,600
Montana	216,038	238,635	2,062,591	2,412,763	73,006	453,332	11,400
Nebraska	233,546	496,876	1,457,930	3,031,835	103,329	637,948	12,200
Nevada	206,781	189,916	317,872	1,745,748	48,300	163,501	8,600
New Hampshire	214,426	184,249	31,538	1,430,381	64,845	391,146	13,000
New Jersey	344,200	822,565	1,015,838	7,004,355	111,779	1,898,748	12,600
New Mexico	222,605	216,437	1,310,338	6,033,725	71,851	425,973	7,466
New York	598,897	2,509,857	741,403	6,998,580	280,484	4,575,413	11,700
North Carolina	308,295	1,624,872	783,831	3,202,401	310,305	2,491,741	11,329
North Dakota	215,032	349,694	1,093,374	1,320,101	75,728	502,474	11,400
Ohio	430,710	1,931,636	921,941	6,216,780	294,172	2,467,134	9,400
Oklahoma	255,341	607,939	1,782,204	8,355,248	124,745	1,427,665	13,000
Oregon	242,040	425,476	24,941	1,197,316	105,614	1,118,748	12,523
Pennsylvania	469,049	2,097,225	4,401	5,933,016	355,753	3,315,042	12,600
Rhode Island	220,429	170,238	559,270	2,308,256	150,544	276,239	11,379
South Carolina	256,632	755,702	946,997	4,238,025	177,517	1,413,951	11,400
South Dakota	216,175	351,629	2,053,218	2,839,137	80,565	295,693	10,600
Tennessee	284,786	1,159,938	196,356	2,853,424	207,063	1,212,167	9,800
Texas	427,698	2,019,200	2,234,361	15,046,305	207,082	2,023,165	11,400
Utah	221,169	199,828	860,118	2,725,390	61,932	430,201	11,822
Vermont	209,267	190,306	----------	60,365	63,550	165,328	----------
Virginia	294,290	1,064,585	4,875,857	16,697,163	212,929	1,765,255	10,965
Washington	267,818	618,742	836,537	9,870,270	128,774	1,675,885	14,200
West Virginia	244,220	499,536	7,500	166,329	152,796	861,814	11,800
Wisconsin	293,929	1,134,920	356,656	778,660	174,850	1,902,037	13,000
Wyoming	207,845	165,302	115,367	929,078	53,987	−20,764	9,800
Puerto Rico	255,846	904,261	----------	----------	168,589	761,837	----------
Virgin Islands	----------	46,754	----------	108,841	6,382	50,519	----------
Other Territories, etc.[8]	----------	59,942	68,048	920,303	11,077	60,579	----------
Undistributed to States, etc.	----------	----------	----------	12,685,544	----------	----------	----------
Total	14,500,000	41,474,305	53,233,102	276,736,890	7,256,890	62,985,910	545,883

States, territories, etc.	Department of Health, Education, and Welfare [19] — Public Health Service						
	Control of venereal diseases [3] (29)	Control of tuberculosis (30)	Community health practice and research [23] (31)	Mental health activities (32)	National Cancer Institute (33)	National Heart Institute (34)	Water supply and water pollution control [24] (35)
Alabama	$63,864	$151,634	$381,569	$123,506	$75,767	$128,908	$97,300
Alaska	6,862	17,645	35,790	63,632	----------	2,033	8,695
Arizona	44,705	142,040	138,957	66,195	28,667	5,026	39,170
Arkansas	93,910	93,237	243,945	70,331	44,221	67,258	64,872
California	460,133	348,140	984,343	529,487	243,608	398,141	288,045
Colorado	8,613	45,328	171,387	49,720	32,214	76,412	34,960
Connecticut	15,371	31,397	136,259	74,965	29,722	84,820	27,338
Delaware	11,217	14,345	27,239	66,736	22,832	39,878	47,191
District of Columbia	84,594	52,970	42,105	76,772	26,514	69,115	17,875
Florida	215,661	141,598	434,228	189,278	128,814	192,198	117,527
Georgia	332,940	129,533	422,974	164,144	83,889	117,881	113,759
Hawaii	3,216	17,739	1,576,933	66,796	26,489	58,543	39,274
Idaho	7,530	13,330	89,372	66,796	26,514	74,405	27,398
Illinois	351,838	199,071	624,704	301,539	172,227	249,227	139,601
Indiana	----------	69,424	320,378	139,407	72,340	170,684	119,906
Iowa	11,187	30,240	229,925	91,563	35,487	63,898	56,341
Kansas	26,355	25,844	204,020	81,836	41,562	58,756	56,671
Kentucky	48,026	89,497	331,553	124,427	44,774	114,192	93,341
Louisiana	73,940	67,275	338,430	117,664	69,401	50,725	95,529
Maine	----------	18,015	105,205	60,668	26,325	8,000	38,337
Maryland	40,889	86,825	220,040	98,961	52,603	95,000	91,258
Massachusetts	3,115	162,942	339,333	177,726	92,494	172,218	139,595
Michigan	122,100	127,774	542,744	247,352	127,461	239,226	184,390
Minnesota	6,345	39,005	281,438	97,132	44,793	80,264	86,465
Mississippi	46,535	84,215	325,249	92,453	63,349	161,900	83,790
Missouri	69,950	79,852	325,154	139,915	80,740	164,011	69,225
Montana	6,721	16,905	81,969	66,732	27,333	43,082	24,400
Nebraska	8,510	18,877	132,591	55,809	30,430	18,244	27,711
Nevada	17,598	11,663	40,535	57,158	6,400	10,386	11,574
New Hampshire	----------	11,651	59,129	64,542	24,215	14,150	36,045
New Jersey	155,693	121,178	462,215	186,824	94,575	181,858	151,891
New Mexico	40,952	29,098	117,813	66,796	26,514	52,600	32,190
New York	740,554	406,935	998,228	581,540	284,019	406,741	320,756
North Carolina	180,780	78,462	509,562	169,098	96,429	190,226	137,095
North Dakota	16,822	13,945	90,688	65,000	26,415	66,300	26,877
Ohio	16,920	119,697	647,194	306,991	134,773	209,006	200,239
Oklahoma	35,693	40,448	229,977	78,051	51,339	126,884	53,696
Oregon	16,323	28,986	152,359	64,500	25,449	37,754	47,466
Pennsylvania	283,519	359,651	818,997	360,803	209,670	333,234	251,375
Rhode Island	−139	40,739	62,656	65,794	25,951	61,937	51,342
South Carolina	129,504	62,446	300,606	103,541	54,689	149,357	86,049

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART A. FEDERAL AID PAYMENTS TO STATES AND LOCAL UNITS—Continued

States, territories, etc.	Department of Health, Education, and Welfare [19]						
	Public Health Service						
	Control of venereal diseases [5] (29)	Control of tuberculosis (30)	Community health practice and research [22] (31)	Mental health activities (32)	National Cancer Institute (33)	National Heart Institute (34)	Water supply and water pollution control [24] (35)
South Dakota	$15,096	$12,665	$87,742	$66,776	$4,043	$12,027	$26,900
Tennessee	110,985	139,315	380,295	145,144	72,915	175,291	109,697
Texas	210,595	204,910	837,444	363,925	176,991	339,585	204,704
Utah	3,542	14,663	107,793	52,775	25,000	22,728	32,294
Vermont		20,637	52,371	66,796	26,490	22,769	27,398
Virginia	90,141	102,584	368,418	138,114	62,882	98,700	106,050
Washington	21,828	31,797	222,771	82,965	48,615	125,735	68,020
West Virginia	21,743	39,596	183,472	66,639	40,189	76,726	62,609
Wisconsin		50,105	314,899	128,453	76,011	160,346	106,884
Wyoming	374	10,386	53,069	64,712	14,758	24,751	18,439
Puerto Rico	34,783	111,791	328,232	95,809	58,529	159,486	25,261
Virgin Islands	6,923	8,273	7,490	36,503	8,774	15,151	21,499
Other Territories, etc.[3]		8,018	5,740	34,800	5,040	12,520	
Undistributed to States, etc.							
Total	4,314,356	4,394,336	16,527,529	7,015,591	3,431,245	6,090,293	4,446,326

States, territories, etc.	Department of Health, Education, and Welfare [19]						
	Public Health Service					Welfare Administration [25]	
			Construction			Children's Bureau	
	Chronic diseases and health of the aged (36)	Radiological health (37)	Hospital activities [25] (38)	Waste treatment works (39)	Health research facilities (40)	Maternal and child health services (41)	Services for crippled children (42)
Alabama	$226,947	$24,600	$3,136,730	$1,030,193		$733,564	$650,631
Alaska		12,000	849,877	133,740		119,922	130,380
Arizona	60,635	15,499	1,195,887	432,840		212,477	
Arkansas	67,015	16,532	3,307,387	920,739		365,966	372,654
California	911,388	112,108	6,889,858	3,727,339	$65,099	1,378,397	906,610
Colorado	84,763	15,000	2,921,552	704,850		427,395	286,276
Connecticut	61,678	16,532	1,332,582	697,577		376,730	301,310
Delaware	52,928	14,499	926,766	394,076		130,347	127,643
District of Columbia	65,899		607,163	571,800		284,818	222,231
Florida	457,506	38,540	6,597,076	1,181,929	1,443	826,869	569,170
Georgia	126,376	31,101	5,597,502	964,111		717,605	779,008
Hawaii	64,694	15,499	1,702,477	412,601		179,344	192,086
Idaho	52,620	11,000	1,779,503	475,677		199,255	201,548
Illinois	487,739	48,560	6,599,483	1,771,228		711,398	823,243
Indiana	154,192	28,000	2,229,520	1,629,166	45,779	444,812	594,468
Iowa	64,222	7,500	2,883,996	1,102,106		333,312	489,568
Kansas	159,263	15,499	2,918,698	651,353		261,847	281,974
Kentucky	226,001	24,075	3,481,150	875,502		536,390	602,437
Louisiana	65,173	18,040	5,058,230	1,966,812		504,386	585,662
Maine	92,448	15,499	1,178,015	427,080		176,727	132,442
Maryland	183,969	20,768	2,748,784	639,119		386,612	434,917
Massachusetts	394,536	23,400	2,301,240	1,459,097	142,500	416,413	454,105
Michigan	480,151	51,456	5,468,513	1,989,520		877,302	995,025
Minnesota	223,246	23,518	4,029,441	1,266,753		510,088	663,610
Mississippi	297,882	21,388	4,562,142	817,715	1,157,050	581,002	546,727
Missouri	365,000	32,444	4,388,569	819,627		516,652	475,938
Montana	46,846	3,000	509,699	616,801		147,192	189,475
Nebraska	17,913	9,000	2,280,275	970,501		162,301	194,670
Nevada	33,000	5,000	431,758	436,460		124,979	138,718
New Hampshire	38,826	15,449	1,347,760	74,912		89,300	125,602
New Jersey	360,704	36,577	2,875,180	1,061,326		376,986	357,968
New Mexico	65,626	15,499	2,099,210	1,090,127		266,765	235,258
New York	1,033,741	128,020	8,018,352	1,911,061	259,200	1,119,144	936,035
North Carolina	381,955	37,197	7,549,649	1,867,534		876,005	977,404
North Dakota	64,300	15,499	1,120,148	165,940		140,850	139,489
Ohio	543,805	51,900	6,982,423	2,297,975	407,198	915,101	968,474
Oklahoma	214,510	18,289	3,942,865	759,193		364,009	320,503
Oregon	11,251	15,499	2,211,086	1,002,612		195,261	236,246
Pennsylvania	834,615	81,100	10,558,224	1,791,587		1,122,637	[11] 1,233,355
Rhode Island	65,961	9,000	904,318	140,540		223,108	157,336
South Carolina	92,640	23,145	7,774,372	571,597		515,125	[1] 568,944
South Dakota	23,765	7,999	1,395,189	170,809		88,875	96,015
Tennessee	154,876	35,234	5,057,937	1,603,800		711,801	674,362
Texas	329,542	66,541	10,534,819	2,411,075		1,077,724	1,338,509
Utah	20,000	15,499	1,564,700	379,555		165,133	172,642
Vermont	26,016	9,000	339,968	548,382		128,721	125,262
Virginia	216,321	22,220	4,400,697	987,850	1,367	694,989	665,600
Washington	191,537	23,971	1,478,848	1,034,622	9,400	407,312	346,293
West Virginia	127,173	12,000	2,878,332	927,401		363,836	381,346
Wisconsin	255,662	26,900	4,004,743	1,123,342	69,920	492,103	501,125
Wyoming	37,241	13,000	196,452	73,575		123,108	116,975
Puerto Rico	125,651	18,000	7,850,080	656,963		601,120	677,506
Virgin Islands	50,900	1,000	16,034			108,736	108,000
Other Territories, etc.[3]	14,000		33,568			59,656	27,270
Undistributed to States, etc.							
Total	10,804,648	1,373,595	183,048,827	51,738,090	2,158,956	23,871,507	23,830,105

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART A. FEDERAL AID PAYMENTS TO STATES AND LOCAL UNITS—Continued

States, territories, etc.	Department of Health, Education, and Welfare [19]						
	Welfare Administration [26]						
	Children's Bureau—Continued	Bureau of Family Services					American Printing House for the Blind
	Child welfare services	Old-age assistance	Aid to dependent children	Aid to the permanently and totally disabled	Aid to the blind	Medical assistance for the aged	
	(43)	(44)	(45)	(46)	(47)	(48)	(49)
Alabama	$657,665	$66,718,545	$10,965,735	$5,876,313	$764,250	$451,633	$13,243
Alaska	166,523	651,729	832,799		46,446		
Arizona	248,736	7,419,233	10,396,919	777,199	566,235		5,802
Arkansas	423,097	32,947,595	4,556,318	4,389,698	1,173,942	1,034,658	7,315
California	1,569,830	185,200,322	98,159,888	19,967,491	8,138,807	32,764,778	66,760
Colorado	320,804	30,639,939	10,232,724	3,494,279	153,335		7,609
Connecticut	267,884	5,852,573	12,714,609	2,767,355	172,861	7,064,663	16,143
Delaware	107,921	597,493	1,876,681	258,590	169,262		2,060
District of Columbia	123,273	1,995,641	5,190,348	1,803,671	114,203	100,000	2,270
Florida	654,178	40,900,224	18,091,667	8,621,936	1,462,143		20,726
Georgia	707,667	47,246,217	14,221,482	13,548,875	1,616,058		18,119
Hawaii	166,485	694,294	3,848,307	621,084	58,487	745,338	2,859
Idaho	94,995	3,444,675	2,749,568	1,334,365	83,735	1,635,447	1,135
Illinois	937,531	39,112,259	71,172,084	15,138,983	1,569,072	1,966,161	30,395
Indiana	623,977	14,557,280	12,058,439	158,963	1,145,314		15,891
Iowa	539,013	21,321,763	11,126,282	552,951	816,250		8,156
Kansas	366,066	18,103,474	7,483,920	2,721,630	341,566		11,225
Kentucky	633,138	29,268,436	19,392,873	5,724,345	1,484,509	775,433	8,450
Louisiana	612,619	94,191,008	22,303,928	10,309,114	1,791,875		11,645
Maine	202,320	7,619,457	6,031,931	1,523,898	256,908	562,631	2,102
Maryland	384,310	5,535,745	15,633,974	3,751,839	238,498	1,611,844	16,180
Massachusetts	600,622	38,875,549	20,664,048	6,729,562	1,332,407	24,511,281	27,663
Michigan	974,836	30,197,808	32,583,265	3,712,062	962,690	11,392,308	30,017
Minnesota	523,657	30,431,933	12,033,307	1,678,296	662,259		13,159
Mississippi	494,063	30,234,439	8,489,570	5,712,248	1,343,247		7,189
Missouri	565,960	54,931,498	21,718,183	7,741,124	2,178,420		11,982
Montana	157,279	3,475,671	2,011,483	806,050	183,623		2,354
Nebraska	240,588	8,022,403	3,244,251	1,175,709	396,110		4,582
Nevada	93,876	1,707,052	1,244,565		107,845		925
New Hampshire	103,644	3,004,451	1,015,548	322,229	146,105	22,081	2,270
New Jersey	568,956	11,766,098	22,683,602	4,724,350	583,759		27,452
New Mexico	237,241	7,989,380	8,691,631	2,090,364	236,224		4,919
New York	1,342,625	41,753,059	122,977,179	23,194,878	2,345,886	48,863,243	68,484
North Carolina	895,899	23,415,056	24,820,860	12,896,505	2,909,960		23,164
North Dakota	170,543	4,493,428	1,982,487	854,905	60,107	1,749,660	1,261
Ohio	1,236,363	53,743,358	38,416,784	10,106,886	2,219,129		34,767
Oklahoma	420,508	62,808,189	20,111,519	7,469,142	1,090,055	1,254,840	5,339
Oregon	258,285	10,292,667	8,566,259	2,989,277	226,627		9,207
Pennsylvania	1,245,035	29,382,787	82,713,769	10,371,304	3,197,040	6,218,794	50,659
Rhode Island	172,472	3,816,710	5,206,453	1,515,341	72,980		3,910
South Carolina	544,305	12,866,023	5,430,345	4,064,336	923,978	1,174,858	8,155
South Dakota	176,334	5,649,358	2,886,629	682,351	90,750		2,564
Tennessee	640,740	23,162,635	15,730,902	5,616,879	1,140,910	783,599	13,326
Texas	1,156,684	139,010,970	15,039,654	4,353,948	2,992,668		27,999
Utah	227,350	3,804,748	5,574,425	2,933,492	119,388	1,576,122	3,363
Vermont	129,554	4,205,402	1,544,659	622,801	70,201	195,827	925
Virginia	634,676	7,926,203	10,364,177	3,951,033	651,042		15,765
Washington	392,397	30,692,251	14,537,564	7,108,083	432,503	2,309,315	13,117
West Virginia	345,156	7,504,134	33,130,209	3,284,911	411,056	734,118	9,123
Wisconsin	557,091	20,852,108	11,517,726	3,246,483	533,615		11,645
Wyoming	110,600	1,792,260	877,329	347,401	34,143		1,219
Puerto Rico	589,184	2,067,594	5,607,377	1,398,053	101,929	358,322	3,363
Virgin Islands	76,532	101,853	99,826	17,512	3,594	11,104	
Other territories, etc.[4]	12,676	29,481	81,668	16,365	921	10,389	42
Undistributed to States, etc							
Total	25,703,763	1,364,024,458	920,677,729	245,076,449	49,924,927	149,878,447	708,000

States, territories, etc.	Department of Health, Education, and Welfare [19]	Department of the Interior [19]				
	Vocational Rehabilitation Administration	Federal aid in wildlife restoration and fish restoration and management [27]	Migratory Bird Conservation Act and Alaska game law—shared revenues	Payments from receipts under Mineral Leasing Act—shared revenues	Payments under certain special funds—shared revenues [28]	Bureau of Indian Affairs [29]
	(50)	(51)	(52)	(53)	(54)	(55)
Alabama	$3,317,669	$402,882	$13	$2,571	$113	
Alaska	83,333	728,627	5,445	8,572,864	716,115	$500,441
Arizona	598,103	407,047		198,727	349,715	2,855,525
Arkansas	2,375,524	401,574	43,651	91,622	742	
California	3,542,251	870,675	525	2,598,917	101,500	
Colorado	1,280,488	571,556	2,651	3,235,380	32,282	112,128
Connecticut	379,337	128,194				
Delaware	181,072	115,630	218			
District of Columbia	334,919					
Florida	2,516,951	236,727	14,117	191	792	29,700
Georgia	6,977,059	509,113	25,881			
Hawaii	374,652	117,839				
Idaho	253,253	358,524	13,989	196,398	44,019	147,800
Illinois	2,094,180	472,868	4,261			
Indiana	631,002	491,265		30		
Iowa	1,126,864	370,891	2,049		24	50,408
Kansas	708,323	146,347	1,655	155,756	12	16,200
Kentucky	1,045,465	364,729	806			

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART A. FEDERAL AID PAYMENTS TO STATES AND LOCAL UNITS—Continued

States, territories, etc.	Department of Health, Education, and Welfare [19]	Department of the Interior [19]				
	Vocational Rehabilitation Administration	Federal aid in wildlife restoration and fish restoration and management [27]	Migratory Bird Conservation Act and Alaska game law—shared revenues	Payments from receipts under Mineral Leasing Act—shared revenues	Payments under certain special funds—shared revenues [28]	Bureau of Indian Affairs [29]
	(50)	(51)	(52)	(53)	(54)	(55)
Louisiana	$1,877,210	$257,486	$278,682	$118,383	$702	
Maine	407,559	206,551	1,261			
Maryland	978,199	184,290	10,176			
Massachusetts	1,384,513	122,932	38			
Michigan	1,741,566	971,167	5,081	5,013	2	
Minnesota	1,440,539	775,991	2,979		406	$395,412
Mississippi	1,347,023	248,906	3,118	3,548	206	
Missouri	1,250,926	433,644	1,072			
Montana	313,654	456,434	9,818	2,037,772	129,353	235,631
Nebraska	474,860	233,898	31,446	9,030	185	170,000
Nevada	111,267	446,893	4,390	208,620	376,151	106,885
New Hampshire	144,638	102,520				
New Jersey	1,596,882	205,401				
New Mexico	298,265	575,335	725	9,425,931	55,903	1,731,578
New York	5,376,326	745,681	157			
North Carolina	3,189,023	425,443	161		1,820	18,780
North Dakota	450,657	298,843	10,141	384,935		341,878
Ohio	1,945,333	544,058	25			
Oklahoma	1,991,716	282,984	10,728	72,169	6,535	569,089
Oregon	687,862	332,403	47,161	203	16,189,934	23,960
Pennsylvania	6,607,300	774,857	176			
Rhode Island	570,602	115,221				
South Carolina	1,880,594	210,283	4,038			
South Dakota	342,888	335,783	4,002	91,853	10,476	718,442
Tennessee	1,834,691	425,711	509			
Texas	2,600,725	740,127	11,159			
Utah	334,543	317,283	213	6,079,179	33,424	96,167
Vermont	282,210	100,031	178			
Virginia	1,663,089	259,782	48			
Washington	907,627	416,156	19,998	1,480	23,188	91,000
West Virginia	1,859,672	191,880				
Wisconsin	1,124,772	1,000,821	9,680		90	110,000
Wyoming	92,890	495,945	45	13,656,982	105,468	52,850
Puerto Rico	1,130,397	17,643				
Virgin Islands	45,243	5,586			7,682,529	
Other territories, etc.[8]	53,809	14,616				
Undistributed to States, etc.						
Total	73,160,503	19,967,071	582,467	47,147,555	25,861,686	8,472,874

States, territories, etc.	Department of Labor	Federal Power Commission	Federal Aviation Administration	Housing and Home Finance Agency [11]		
				Office of Administrator		Public Housing Administration
	Unemployment Compensation and Employment Service Administration (trust fund) [30]	Payments under Federal Power Act—shared revenues	Federal airport program [31]	Urban renewal program [32]	Urban planning assistance	Low-rent public housing program
	(56)	(57)	(58)	(59)	(60)	(61)
Alabama	$3,967,310		$862,358	$3,219,951	$48,190	$6,768,114
Alaska	1,302,587	$672	865,049	341,507	33,811	218,661
Arizona	4,090,645	397	578,876		2,933	465,371
Arkansas	3,180,599	4	287,783	3,308,552	153,057	925,040
California	38,776,122	31,914	6,819,772	10,607,332	1,187,917	7,206,082
Colorado	2,993,892	543	2,907,238	926,712	112,049	1,058,812
Connecticut	4,466,785		345,879	14,576,768	310,991	2,868,738
Delaware	780,037		191,400			587,465
District of Columbia	2,803,060			815,732		3,309,933
Florida	6,186,616	3	1,875,966		48,731	3,643,754
Georgia	4,309,520	36	1,135,806	4,485,136	409,019	8,047,826
Hawaii	1,366,156		1,230,551	3,227,762	135,164	534,928
Idaho	1,965,931	5,245	211,010			11,613
Illinois	15,370,239		1,137,584	9,037,936	453,237	13,956,533
Indiana	5,194,535		1,178,542	4,717,301	74,962	1,073,799
Iowa	2,955,064		741,254	2,795,661	126,097	
Kansas	2,460,700		383,295	2,275,072	160,583	153,686
Kentucky	3,342,291		729,654	1,066,540	359,182	3,218,027
Louisiana	4,299,711		1,279,002		115,353	3,5815,71
Maine	1,504,718		99,868	118,109	160,024	49,158
Maryland	5,227,049		198,304	10,461,660	246,565	3,96,5501
Massachusetts	11,427,038		1,210,233	4,094,187	1,191,449	6,976,861
Michigan	13,508,480	105	1,964,560	13,218,498	1,074,577	3,446,731
Minnesota	4,237,978	11	1,574,358	2,286,412	146,503	1,610,594
Mississippi	2,971,160	24	1,732,307	356,786	34,297	1.785,107
Missouri	5,558,791		1,127,568	3,108,782	208,363	4,895,025
Montana	1,760,320	10,881	583,826		432	158,228
Nebraska	1,549,427		742,730		9,100	323,333
Nevada	1,442,874	898	996,550		18.697	201,195
New Hampshire	1,079,138		172,426	335,535	190,420	487,789
New Jersey	12,777,976		283,304	4,777,217	508,715	12,329,894
New Mexico	1,857,243	3	229,435		139,898	47,043
New York	49,741,177		1,000,474	24,378,697	260,210	26,638,655
North Carolina	5,472,173	31	452,434	2,131,799	293,490	3,466,547
North Dakota	1,292,096		145,137	106,470	17,600	32,662
Ohio	12,027,001		2,495,432	14,957,969	427,544	4,530,799
Oklahoma	4,314,167		1,685,665	145,579	202,248	
Oregon	3,972,303	4,258	545,676	4,019	238,684	233,497

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART A. FEDERAL AID PAYMENTS TO STATES AND LOCAL UNITS—Continued

States, territories, etc.	Department of Labor	Federal Power Commission	Federal Aviation Administration	Housing and Home Finance Agency [11]		
				Office of Administrator		Public Housing Administration
	Unemployment Compensation and Employment Service Administration (trust fund) [10]	Payments under Federal Power Act—shared revenues	Federal airport program [11]	Urban renewal program [12]	Urban planning assistance	Low-rent public housing program
	(56)	(57)	(58)	(59)	(60)	(61)
Pennsylvania	$23,360,023	$3	$1,124,860	$23,010,867	$656,173	$12,079,207
Rhode Island	2,959,569			2,201,098	156,320	1,800,709
South Carolina	3,089,937	183	1,760,412	303,097		1,386,560
South Dakota	943,988		39,753			
Tennessee	3,842,328		2,936,584	7,128,600	339,452	5,622,191
Texas	12,712,011		1,097,152	3,824,322	223,827	7,787,701
Utah	2,996,702	1,142	338,323		29,000	
Vermont	828,283		28,583		57,227	
Virginia	3,376,196	16	1,137,915	2,760,467	131,379	4,211,436
Washington	5,796,528	1,899	926,507	256,661	448,090	955,113
West Virginia	2,604,616	3	663,280	1,144,902	173,378	485,307
Wisconsin	4,653,601	66	1,121,816	2,992,164	612,320	702,100
Wyoming	984,164	106	65,759		8,940	
Puerto Rico	2,527,298	13	251,188	1,383,714	442,715	6,027,192
Virgin Islands	96,112			24,000	10,000	475,623
Other Territories, etc. [3]	19,017					
Undistributed to States, etc.	8,106,763					
Total	330,430,044	58,453	51,493,441	186,914,083	12,388,967	170,339,912

States, territories, etc.	Small Business Administration	Tennessee Valley Authority	Veterans' Administration		Miscellaneous grants [5]	Total grant payments (Part A)
	Grants for research and management counseling [5]	Shared revenues [13]	State homes for disabled soldiers and sailors [14]	Approval and supervision of training establishments [15]		
	(62)	(63)	(64)	(65)	(66)	(67)
Alabama		$1,602,730		$37,932		$185,121,762
Alaska					[16] $3,110,437	55,984,637
Arizona	$1,312			10,743		92,650,787
Arkansas				14,897		122,552,025
California	4,000		$1,656,601	128,990	[17] 17,009,749	825,109,563
Colorado	4,000		68,225		[18] 15,014	123,566,433
Connecticut	3,909		562,118	5,322	[19] 46,239	97,402,578
Delaware						27,282,929
District of Columbia	541				[20] 30,396,242	83,228,917
Florida				35,989		179,935,377
Georgia	5,000	67,009	196,963	28,462		207,954,348
Hawaii					[21] 7,344,732	41,790,923
Idaho	9,250		39,939		[22] —189	52,612,611
Illinois	3,200		469,530	58,048		386,209,623
Indiana	5,700		173,064	20,943	[19] 31,737	143,343,857
Iowa			212,470	20,087		102,372,804
Kansas			44,915	7,290		87,737,937
Kentucky	11,000	1,076,543		23,385		173,356,714
Louisiana	10,310			41,918		252,817,102
Maine	3,895					50,558,682
Maryland						118,622,204
Massachusetts	3,760		736,023	21,000		206,208,532
Michigan	10,000		582,141	13,846		297,604,462
Minnesota			241,684	32,201		150,798,029
Mississippi		282,684		12,157		136,531,268
Missouri			55,039	26,595		216,136,701
Montana			53,543	4,654		66,532,571
Nebraska	17,000		115,053	6,125		70,624,691
Nevada	3,213					30,390,039
New Hampshire	4,000		28,186	4,988		28,582,513
New Jersey			171,779			177,894,265
New Mexico				7,211		90,847,757
New York	2,241		5,796	508		606,355,657
North Carolina	3,000	112,414		32,344		168,012,616
North Dakota	3,500		63,608	5,278		39,773,455
Ohio			442,260	40,911		373,579,536
Oklahoma			362,545	20,020		187,764,436
Oregon	3,798			6,422		138,051,777
Pennsylvania	4,000		165,373	50,120	[23] 39,801	423,573,336
Rhode Island			221,392	9,324		41,736,351
South Carolina	907			14,480		92,228,246
South Dakota	20,000		123,285	4,658		47,439,217
Tennessee		4,156,040		24,294		211,914,543
Texas				45,543	[24] —122	444,588,773
Utah				1,961	[25] 94,500	71,638,913
Vermont			44,312	911		30,745,644
Virginia	10,000	25,998		8,266	[26] 150,000	181,381,577
Washington			339,402	384		165,984,528
West Virginia	—2,921			18,276		98,991,024
Wisconsin	8,000		193,114	9,356		137,798,044
Wyoming	4,000		9,901			62,364,800
Puerto Rico				3,826	[27] 56,789,041	122,434,438
Virgin Islands	4,170				[28] 1,203,296	10,781,715
Other territories, etc. [3]					[29] 22,338,400	26,662,559
Undistributed to States, etc.						30,521,066
Total	160,784	7,323,419	7,378,261	859,665	138,628,874	8,596,681,878

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART B. FEDERAL AID PAYMENTS TO INDIVIDUALS, ETC., WITHIN THE STATES

States, territories, etc.	Department of Agriculture						Department of Commerce
	Agricultural conservation program [49] (68)	Sugar Act program (69)	Conservation reserve program (70)	Land-use adjustment program (71)	Great Plains conservation program (72)	Rural housing grants (73)	State marine schools (subsistence of cadets) (74)
Alabama	$6,726,199		$4,909,369			$59,835	
Alaska	1,632,142						
Arizona	1,665,198		37,488			20,332	
Arkansas	5,191,687		6,646,741	$28,656		334,895	
California	4,137,181	$9,213,812	2,354,020	20,337			$150,861
Colorado	3,418,924	6,835,438	9,044,571	1,236	$777,912	2,970	
Connecticut	518,005		81,330	3,193			
Delaware	327,165		291,135				
District of Columbia							
Florida	2,779,316	3,309,745	2,071,678	520		17,410	
Georgia	7,392,114		11,778,935	195,436		21,130	
Hawaii	138,215	10,184,393					
Idaho	2,231,413	5,876,424	3,164,670	288,826		3,500	
Illinois	9,698,205	43,142	7,124,574	227			
Indiana	6,198,048	64,578	8,453,682	620			
Iowa	10,822,132	8,382	10,557,378	220,399			
Kansas	6,452,741	507,777	16,246,533	279,663	581,142	7,125	
Kentucky	8,206,871	14,362	5,962,802	4,137		15,300	
Louisiana	4,452,501	7,581,750	2,846,468	6,614		1,000	
Maine	1,013,533		1,298,512	751,633		22,620	175,125
Maryland	1,278,811		1,204,645				
Massachusetts	577,049		48,285	7,817			109,078
Michigan	5,300,689	2,458,928	8,572,085	15,844		12,810	
Minnesota	6,376,099	2,781,310	18,729,170	315,267		7,930	
Mississippi	6,531,079		3,904,877	353,664		83,615	
Missouri	9,953,243	17,769	10,914,794	98,250		95,525	
Montana	3,782,104	2,110,295	5,341,448	1,000	495,724	1,000	
Nebraska	7,085,542	2,526,413	9,867,202	3,376	866,431	1,380	
Nevada	442,392	9,070					
New Hampshire	547,347		151,313	8,933		1,000	
New Jersey	772,209		783,154				
New Mexico	1,915,071	4,422	6,306,616		469,637	2,260	
New York	4,188,258		5,735,153	9,283		3,400	335,364
North Carolina	7,352,055		3,955,087	385,489		47,715	
North Dakota	4,558,770	1,413,762	24,580,607	513,172	492,963	3,000	
Ohio	6,211,153	837,909	8,212,475	5,208		1,000	
Oklahoma	7,480,457	122,228	14,355,043	26,325	534,684	12,935	
Oregon	3,021,563	1,177,038	2,933,488	101			
Pennsylvania	4,563,314		5,144,164	51,083		6,000	
Rhode Island	81,380		872				
South Carolina	3,704,337		7,904,565	443		950	
South Dakota	4,065,622	297,292	17,072,599	5,740	391,509	4,720	
Tennessee	5,774,179		7,012,638	13,372		1,000	
Texas	20,669,776	86,209	31,486,908	8,479	2,311,025	17,305	8,479
Utah	1,573,389	1,047,222	1,820,848	216,952			
Vermont	1,073,257		416,987	1,289			
Virginia	4,510,367		1,631,589	17,001			
Washington	2,397,641	3,110,792	3,971,728				
West Virginia	1,712,012		825,321			3,168	
Wisconsin	5,932,638		9,261,701	136,000		1,000	
Wyoming	2,209,088	1,606,632	945,663		148,546	2,500	
Puerto Rico	958,254	5,665,353				155,700	
Virgin Islands							
Other territories, etc.[3]							
Undistributed to States, etc.							
Total	219,600,735	68,912,447	305,958,001	3,995,585	7,069,573	972,030	778,908

States, territories, etc.	Department of Defense			Department of Health, Education, and Welfare			
	Army	Air Force		Office of Education			
	National Guard [50] (75)	National Guard [50] (76)	Civil defense [51] (77)	Defense educational activities [5] (78)	Cooperative research (79)	Expansion of teaching in education of the mentally retarded [5] (80)	Expansion of teaching in education for the deaf (81)
Alabama	$5,650,205	$2,591,341	$41,522	$446,061	$2,491		$22,360
Alaska	1,534,622	1,193,714	25,633	189	9,270		
Arizona	1,570,375	3,223,146	34,841	841,011	46,434		35,381
Arkansas	3,859,464	2,160,496	43,761	207,586	4,925		33,170
California	12,453,066	7,563,196	112,090	3,945,542	975,406	$32,087	109,903
Colorado	1,318,547	3,143,514	44,427	962,070	81,493	24,667	32,280
Connecticut	3,583,608	2,019,795	17,174	804,925	29,776	−1,229	
Delaware	1,720,660	1,359,134	12,331	132,378	33,486		
District of Columbia	961,377	1,847,589	23,539	1,022,056	24,222		70,125
Florida	3,675,747	2,060,891	165,722	993,754	114,798		
Georgia	5,323,994	3,948,465	88,224	1,049,491	52,197	24,400	22,620
Hawaii	4,749,703	3,607,252	31,201	169,740	6,000		
Idaho	1,821,719	1,466,697	33,041	245,458			
Illinois	7,318,072	3,486,306	79,315	2,318,404	451,171	22,800	103,080
Indiana	4,567,247	2,411,500	72,835	1,802,016	63,587		40,776
Iowa	3,536,291	3,308,038	62,748	634,067	94,235		
Kansas	2,944,488	2,615,783	61,006	630,407	32,463	4,175	35,005
Kentucky	2,383,414	1,541,777	61,131	298,937	19,824		

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART B. FEDERAL AID PAYMENTS TO INDIVIDUALS, ETC., WITHIN THE STATES—Continued

States, territories, etc.	Department of Agriculture						Department of Commerce
	Agricultural conservation program [10] (75)	Sugar Act program (76)	Conservation reserve program (77)	Land-use adjustment program (78)	Great Plains conservation program (79)	Rural housing grants (80)	State marine schools (subsistence of cadets) (81)
Louisiana	$3,711,622	$1,942,588	$110,525	$634,529	$18,659		
Maine	1,652,849	1,793,436	34,893	270,946			
Maryland	5,275,232	2,038,071	42,983	435,254			
Massachusetts	71,183,632	3,069,681	22,566	1,715,337	234,275	$10,500	$82,852
Michigan	7,179,491	3,603,965	2,928	2,031,242	689,993	34,200	32,777
Minnesota	5,063,076	3,038,407	93,385	866,582	130,730	24,000	28,589
Mississippi	4,745,752	2,248,019	70,864	262,783	22,469		
Missouri	3,919,934	3,615,414	65,713	1,061,518	100,308	10,500	84,708
Montana	1,786,894	1,639,732	11,981	206,286			
Nebraska	1,877,641	1,559,367	47,329	387,247	70,993		10,772
Nevada	668,549	1,087,814	551	175,221			
New Hampshire	1,076,881	1,093,696	400	346,765			22,750
New Jersey	8,576,276	3,057,882	65,362	884,617	59,277	9,000	23,510
New Mexico	2,144,934	1,755,625	57,676	365,437			21,088
New York	15,065,683	6,590,933	18,574	5,004,705	603,049	56,000	221,322
North Carolina	4,489,832	1,399,142	49,036	973,742	72,510		4,162
North Dakota	1,237,115	1,604,876	17,675	545,082	1,576		23,867
Ohio	6,939,259	5,822,576	82,749	1,448,204	107,417	23,200	55,485
Oklahoma	3,804,728	2,880,584	78,544	655,711	12,528		11,333
Oregon	2,849,490	2,060,779	43,386	1,034,328	45,718	10,500	56,245
Pennsylvania	11,468,738	5,591,912	108,584	2,075,449	336,227	46,020	54,632
Rhode Island	1,893,509	1,166,520	27,156	401,173	25,801		
South Carolina	4,279,650	1,341,932	50,491	180,971	31,044		
South Dakota	1,836,603	1,729,754	6,300	115,976			18,586
Tennessee	3,966,501	4,586,027	69,701	990,060	28,119	24,000	45,928
Texas	7,965,365	5,141,529	202,819	1,560,366	138,046	24,000	26,802
Utah	2,333,475	1,988,534	856	417,013	79,194		19,305
Vermont	1,474,508	1,645,838	33,681	56,422			
Virginia	5,775,638	895,238	14,142	467,397	86,835	10,929	
Washington	4,308,560	2,323,446	66,247	1,077,636			
West Virginia	1,368,405	2,198,706	35,340	258,772			
Wisconsin	3,495,721	3,716,092	57,215	1,035,688	219,064	24,000	27,351
Wyoming	1,019,247	1,048,058	34,456	381,764			
Puerto Rico	2,921,283	1,903,582	92,447	124,946			
Virgin Islands							
Other territories, etc.[3]							
Undistributed to States, etc.	[2] 122,421,525	[2] 105,090,701		−6,073			
Total	334,750,197	241,822,088	2,727,099	44,958,088	5,155,610	413,749	1,376,764

States, territories, etc.	Department of Health, Education, and Welfare — Public Health Service						
	Mental health activities (82)	Arthritis and metabolic disease activities [4] (83)	Allergy and infectious disease activities (84)	Neurology and blindness activities (85)	Chronic disease and health of the aged (86)	National Cancer Institute (87)	National Heart Institute (88)
Alabama	$241,873	$522,047	$160,740	$123,216	$60,759	$383,565	$594,499
Alaska	5,548	286				785	
Arizona	180,241	69,085	192,698	164,625		140,205	33,684
Arkansas	301,995	389,195	73,206	72,797		118,688	205,262
California	9,889,969	6,862,624	4,788,525	5,481,422	391,572	5,338,548	7,950,925
Colorado	1,210,219	574,471	942,228	250,507	50,172	647,680	583,699
Connecticut	2,426,654	899,315	594,703	667,176	88,860	1,121,013	791,905
Delaware	26,195	2,213	20,021			34,031	24,575
District of Columbia	2,279,116	1,195,933	854,775	397,956	113,835	683,963	1,538,641
Florida	1,047,713	822,236	1,191,223	990,289	84,385	1,066,040	1,100,221
Georgia	799,626	653,442	387,227	408,604	40,158	442,243	1,671,993
Hawaii	173,870	21,288	150,710	14,674	51,088	11,602	54,637
Idaho	55,558	16,865	31,457			1,309	5,924
Illinois	4,512,524	3,615,156	2,784,193	2,348,089		2,936,310	3,630,512
Indiana	1,275,481	620,238	693,063	574,501		391,519	968,010
Iowa	582,487	775,225	314,405	1,007,116		271,931	615,195
Kansas	1,243,666	457,738	423,838	258,549		439,099	247,657
Kentucky	473,991	583,492	214,288	207,503		249,002	718,033
Louisiana	780,756	522,006	1,186,148	1,470,305	5,665	875,862	1,878,413
Maine	204,639	57,835	21,745			684,655	105,149
Maryland	2,507,230	2,930,819	1,365,689	2,338,439	25,558	2,094,596	2,562,088
Massachusetts	8,221,724	7,860,081	2,391,223	5,314,582	158,531	5,707,843	7,263,310
Michigan	3,276,319	2,604,606	606,480	1,655,827	24,065	1,469,858	1,989,292
Minnesota	1,327,917	2,590,328	1,089,182	2,008,425	51,643	989,728	3,504,575
Mississippi	203,757	296,070	213,539	122,979		61,270	578,395
Missouri	2,151,837	1,831,088	807,426	1,613,038	66,018	972,420	1,588,390
Montana	186,389	−2,916	155,953	28,383		61,775	20,406
Nebraska	800,154	154,597	96,256	99,031		171,275	322,193
Nevada	76,889	16,100		12,554	47,240		
New Hampshire	63,849	209,510	69,400	109,464	2,500	269,477	283,060
New Jersey	1,390,148	707,343	752,293	535,688	29,147	835,450	758,125
New Mexico	121,342	30,405	12,927	19,160		63,029	156,401
New York	14,973,645	10,237,871	6,002,414	9,632,825	500,477	11,772,936	10,768,688
North Carolina	1,899,579	1,746,344	506,556	774,141	18,589	1,424,909	2,741,807
North Dakota	61,704	97,989	37,919		4,127	23,349	23,035
Ohio	2,518,608	2,443,810	1,097,315	956,748	53,152	1,113,147	3,488,046
Oklahoma	514,891	757,319	277,709	278,360	53,309	405,946	946,090
Oregon	655,980	866,479	295,189	1,073,967	36,493	783,034	1,745,970

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART B. FEDERAL AID PAYMENTS TO INDIVIDUALS, ETC., WITHIN THE STATES—Continued

States, territories, etc.	Department of Health, Education, and Welfare						
	Public Health Service						
	Mental health activities (82)	Arthritis and metabolic disease activities [3] (83)	Allergy and infectious disease activities (84)	Neurology and blindness activities (85)	Chronic disease and health of the aged (86)	National Cancer Institute (87)	National Heart Institute (88)
Pennsylvania	$4,500,438	$4,261,053	$2,375,219	$2,960,357	$102,564	$4,579,495	$5,544,467
Rhode Island	440,455	188,993	53,447	370,533	13,587	337,093	25,240
South Carolina	191,635	92,179	1,838	114,547	----------	75,274	456,758
South Dakota	105,933	42,368	59,552	----------	----------	18,771	94,430
Tennessee	1,359,482	1,283,051	446,621	577,680	----------	793,022	1,506,140
Texas	1,530,053	1,845,206	1,192,106	612,502	43,851	3,729,742	2,171,118
Utah	641,034	1,103,975	215,400	536,406	----------	571,710	335,753
Vermont	180,027	305,084	151,464	152,613	----------	78,161	359,491
Virginia	315,908	759,261	268,117	805,857	22,016	400,509	912,181
Washington	983,214	2,157,652	626,223	828,349	54,633	863,988	1,547,337
West Virginia	51,647	368,277	69,746	86,918	23,114	105,878	211,177
Wisconsin	1,333,401	1,321,101	1,049,060	690,248	16,634	3,576,299	2,023,753
Wyoming	71,201	−85	34,974	----------	----------	1,350	14,539
Puerto Rico	269,805	316,755	150,100	175,130	41,535	193,635	170,535
Virgin Islands	----------	----------	----------	13,390	----------	----------	----------
Other territories, etc.[5]	1,042,096	2,076,369	2,305,192	2,259,602	----------	2,047,308	2,429,996
Undistributed to States, etc.	----------	----------	----------	----------	----------	----------	----------
Total	81,680,421	70,159,772	39,801,782	51,195,072	2,275,277	61,431,539	79,261,726

States, territories, etc.	Department of Health, Education, and Welfare						
	Public Health Service						
	National Institute of Dental Research [4] (89)	Community health practice and research (90)	Cancer research facilities (91)	Hospital and medical facility research [3] (92)	General research and services (93)	General research support grants (94)	Nursing services and research [3] (95)
Alabama	$391,002	$9,559	----------	----------	$742,283	$165,996	$74,022
Alaska	----------	----------	----------	----------	335,922	----------	----------
Arizona	22,791	10,250	----------	----------	200,130	----------	48,127
Arkansas	----------	8,480	----------	----------	270,395	98,877	65,016
California	865,029	971,581	$150,000	$242,956	10,450,452	2,348,067	610,901
Colorado	6,843	15,943	----------	9,431	1,025,170	282,586	472,757
Connecticut	23,839	180,624	----------	39,663	2,919,337	340,931	139,165
Delaware	----------	----------	----------	----------	61,339	----------	----------
District of Columbia	346,138	21,671	----------	12,923	923,475	409,859	269,534
Florida	84,286	29,139	----------	----------	1,616,078	356,136	87,846
Georgia	254,860	73,239	----------	12,561	1,293,567	312,276	194,828
Hawaii	----------	2,897	----------	----------	260,140	----------	−6,682
Idaho	----------	----------	----------	----------	----------	----------	----------
Illinois	1,168,043	101,623	----------	17,252	6,095,872	1,270,558	97,164
Indiana	429,436	56,635	----------	----------	1,762,283	297,488	157,640
Iowa	232,815	73,737	50,000	----------	1,160,125	214,726	49,494
Kansas	14,688	29,262	----------	75,516	1,028,902	170,665	31,549
Kentucky	45,525	34,442	----------	----------	684,955	226,554	59,941
Louisiana	63,237	197,397	----------	18,036	1,828,795	402,669	32,932
Maine	----------	6,660	----------	----------	113,586	69,224	----------
Maryland	279,042	391,683	----------	36,410	5,433,213	644,017	157,371
Massachusetts	1,674,878	498,837	----------	235,437	9,502,486	1,766,792	682,817
Michigan	589,863	667,407	----------	146,032	3,734,933	694,768	309,439
Minnesota	251,060	469,844	----------	103,678	2,162,106	548,345	126,070
Mississippi	----------	3,115	----------	----------	335,265	95,516	4,157
Missouri	348,219	56,282	----------	−7,169	3,021,718	645,336	332,838
Montana	----------	----------	----------	----------	37,789	----------	170,502
Nebraska	131,869	----------	----------	7,072	230,179	194,530	----------
Nevada	----------	----------	----------	----------	9,921	----------	5,260
New Hampshire	----------	----------	----------	----------	680,096	96,230	48,117
New Jersey	87,167	20,876	----------	14,797	1,587,936	211,784	9,240
New Mexico	13,860	24,389	----------	----------	270,988	50,291	10,080
New York	1,668,525	550,339	----------	113,739	12,509,934	3,980,230	1,429,438
North Carolina	254,544	624,312	----------	24,000	3,577,728	516,666	97,941
North Dakota	2,472	----------	309,592	----------	82,057	40,622	27,196
Ohio	391,922	101,648	----------	177,256	4,433,035	765,369	302,652
Oklahoma	47,976	83,543	115,921	5,000	907,228	160,191	14,163
Oregon	354,464	53,287	----------	43,059	911,979	218,062	71,596
Pennsylvania	1,350,041	274,485	818,057	198,269	5,697,993	1,831,406	550,175
Rhode Island	4,701	----------	----------	----------	791,505	----------	−1,353
South Carolina	25,379	11,235	----------	----------	62,409	74,689	15,162
South Dakota	22,685	12,307	----------	----------	−802	37,940	4,736
Tennessee	193,496	9,173	----------	----------	1,837,165	465,515	11,843
Texas	370,022	52,745	----------	----------	2,180,522	787,922	126,951
Utah	−3,285	36,238	----------	----------	903,104	168,270	49,081
Vermont	10,213	----------	----------	----------	387,723	80,924	----------
Virginia	128,842	20,893	----------	----------	685,341	279,725	3,139
Washington	458,017	96,965	----------	14,582	2,245,297	334,926	208,950
West Virginia	71,759	----------	----------	----------	107,221	87,089	439
Wisconsin	257,629	71,010	----------	13,808	2,207,079	426,824	132,943
Wyoming	----------	----------	----------	----------	12,601	----------	----------
Puerto Rico	58,216	249,919	----------	----------	257,651	144,702	47,344
Virgin Islands	----------	----------	----------	----------	----------	----------	----------
Other territories, etc.[5]	347,063	----------	----------	----------	3,403,793	----------	----------
Undistributed to States, etc.	----------	----------	----------	----------	----------	----------	----------
Total	13,339,171	6,203,671	1,443,570	1,554,308	102,980,059	22,312,283	7,302,521

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART B. FEDERAL AID PAYMENTS TO INDIVIDUALS, ETC., WITHIN THE STATES—Continued

States, territories, etc.	Department of Health, Education, and Welfare						
	Public Health Service						
	Water supply and water pollution control [5] (96)	Air pollution (97)	Milk, food, interstate and community sanitation [53] (98)	Occupational health [5] (99)	Radiological health [5] (100)	Accident prevention (101)	Hospital construction activities (102)
Alabama			$72,694			$20,595	$18,257
Alaska	$37,968						
Arizona	12,799		28,597				
Arkansas	12,367						
California	598,220	$884,226	502,387	$101,575	$99,050	354,733	137,825
Colorado	85,411	20,246	21,938	35,496	74,425		
Connecticut	5,633				10,372		
Delaware							
District of Columbia	52,472	18,537	121,762	−2,652	12,498	104,839	15,836
Florida	223,767	61,051	122,286	20,050	108,511	3,744	
Georgia	18,725	53,274	46,550	67,381	159,533		13,788
Hawaii			116,211				36,531
Idaho							
Illinois	200,189	60,422	186,446	16,780	69,445		24,325
Indiana	16,513		52,678	32,072	16,500	200,724	41,782
Iowa	70,742		148,436	12,690	11,747	12,540	
Kansas	25,675	13,212	44,445	18,366	3,433		2,351
Kentucky	13,544						
Louisiana	14,293	54,971	10,235		28,583	67,470	
Maine	20,147				27,100		9,508
Maryland	196,162	99,028	25,549	36,744	172,831		107,684
Massachusetts	260,691	204,805	268,155	155,120	152,240	45,945	10,946
Michigan	307,147	184,908	134,717	89,394	87,181	72,766	10,001
Minnesota	104,974	97,910	112,726	125,666	32,611		64,408
Mississippi	3,296		14,975		8,117	35,554	
Missouri	146,315	6,100	46,895	7,833	46,557	68,018	23,162
Montana	74,620		28,938				
Nebraska	−6,032	28,610	3,989				
Nevada							
New Hampshire	14,646	16,066	8,974		1,500		
New Jersey	81,421	74,530	27,862		49,967		23,140
New Mexico							
New York	302,159	305,621	191,196	263,849	429,606	631,866	104,342
North Carolina	109,670	78,316	105,247	52,356	44,901		28,568
North Dakota	48,801		5,500				
Ohio	62,301	177,430	158,805	163,915	76,017	79,580	10,604
Oklahoma	143,626			56,955	20,068		
Oregon	214,166		288,925		8,000		
Pennsylvania	80,743	284,085	108,913	288,567	53,497	171,732	23,100
Rhode Island	100,310						
South Carolina	15,320	17,610					
South Dakota			4,480		10,713		
Tennessee	86,263			18,596	50,000		
Texas	163,128	58,123	37,484	44,902	59,686		
Utah	70,715	38,468	46,665		113,020		
Vermont							
Virginia	75,351	11,400	26,516		−2,095		
Washington	133,050	4,080	139,503	12,880	28,822	6,012	46,177
West Virginia	8,740	11,000	28,852				30,363
Wisconsin	221,230	54,666	112,646	21,592	33,820		
Wyoming			3,152				
Puerto Rico							
Virgin Islands							
Other territories, etc [8]	32,739	19,100	332,378	11,500	66,033		
Undistributed to States, etc.							
Total	4,460,017	2,937,795	3,737,707	1,651,627	2,164,289	1,876,118	782,698

States, territories, etc.	Department of Health, Education, and Welfare						
	Public Health Service	Welfare Administration [26]					
		Children's Bureau			Bureau of Family Services	Office of the Commissioner	
	Construction of health research facilities (103)	Maternal and child health services (104)	Services for crippled children (105)	Child welfare research and demonstration grants (106)	Assistance to repatriated U.S. nationals [11] (107)	Cooperative research [3] (108)	Assistance to refugees in the United States (109)
Alabama	$154,112						$4,641
Alaska							
Arizona	6,045						
Arkansas							
California	2,396,832	$92,056	$267,042	$77,330	$12,257		411,306
Colorado	355,247		12,075	7,648	347		21,864
Connecticut	292,097			7,350			37,746
Delaware							
District of Columbia	63,611		86,367	98,267	201,621	$18,500	15,038
Florida	334,799			2,860	123,007	−486	37,948,408
Georgia	70,991	19,753		2,690	400	−143	5,337
Hawaii							
Idaho							
Illinois	3,727,798			85,462	2,672	220,139	306,118
Indiana	590,400					11,703	20,613

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART B. FEDERAL AID PAYMENTS TO INDIVIDUALS, ETC., WITHIN THE STATES—Continued

States, territories, etc.	Department of Health, Education, and Welfare						
	Public Health Service	Welfare Administration [20]					
		Children's Bureau			Bureau of Family Services	Office of the Commissioner	
	Construction of health research facilities	Maternal and child health services	Services for crippled children	Child welfare research and demonstration grants	Assistance to repatriated U.S. nationals [11]	Cooperative research [3]	Assistance to refugees in the United States
	(103)	(104)	(105)	(106)	(107)	(108)	(109)
Iowa	301,333			2,490			9,030
Kansas	227,779		48,839			35,912	2,444
Kentucky	177,249			7,578			1,638
Louisiana	1,307,446	15,376		5,640	855		77,215
Maine	6,248						1,194
Maryland	2,142,884	157,640	232,644				4,046
Massachusetts	698,520	227,635		32,670		34,944	7,159
Michigan	1,373,655	68,324		28,093	1,645	221,205	51,030
Minnesota	152,281	15,379		3,041			2,084
Mississippi							120
Missouri	184,893			5,676		5,000	11,075
Montana	77,331						
Nebraska	1,012,175						5,802
Nevada	53,783						2,132
New Hampshire	56,176						1,354
New Jersey	591,866			2,627	3,105		487,557
New Mexico	266,550						123
New York	8,717,683	166,054	58,865	287,081	28,516	234,791	9,618
North Carolina	959,904	59,322		4,149		54,981	2,341
North Dakota	10,472						
Ohio	835,044			8,124	2,760	52,395	5,601
Oklahoma	50,318						2,393
Oregon	211,314						32,078
Pennsylvania	1,405,380	120,488	127,220	22,085		9,630	33,185
Rhode Island	254,668						
South Carolina	144,393						302
South Dakota	7,023						
Tennessee	650,495	48,169	64,254		124		1,016
Texas	968,304			14,575	4,739	19,083	15,048
Utah	787,227						
Vermont	162,919						460
Virginia	1,092,875			2,760			4,606
Washington	245,447	25,844					7,517
West Virginia				2,526			
Wisconsin	959,086			28,219			7,534
Wyoming							
Puerto Rico						35,000	
Virgin Islands							
Other territories, etc.[5]							
Undistributed to States, etc.							
Total	34,084,653	1,016,040	897,306	738,941	382,048	952,654	39,256,779

[Revised Mar. 9, 1964]

States, territories, etc.	Department of Health, Education, and Welfare		Department of Labor			National Science Foundation	
	Office of the Secretary	Vocational Rehabilitation Administration	Unemployment compensation for Federal employees and exservicemen	Area Redevelopment Act [5] [55]	Manpower development training activities [56]	Research grants awarded	Fellowship awards [57]
	Juvenile delinquency and youth offenses						
	(110)	(111)	(112)	(113)	(114)	(115)	(116)
Alabama		$133,883	$3,262,388	$252,762	$748,901	$489,700	$96,427
Alaska		48,219	908,993	26,686	210,332	432,073	25,068
Arizona		220,267	1,179,179	−1,386	405,848	2,838,785	84,693
Arkansas		71,581	1,276,365	359,172	590,666	151,414	29,761
California	$238,099	2,040,133	26,971,834	21,233	3,868,338	21,091,252	1,432,638
Colorado	17,595	286,992	2,007,796	45,233	333,347	3,535,912	283,215
Connecticut		110,171	766,883	122,588	801,242	3,713,419	190,071
Delaware			198,085		38,380	272,467	8,301
District of Columbia	337,817	759,843	2,880,360		314,442	4,500,043	110,655
Florida		395,849	2,654,383	39,460	606,630	2,354,948	131,041
Georgia		108,112	2,164,436	−562	559,933	1,276,351	98,402
Hawaii		45,390	1,337,139	7,370	154,364	1,982,802	12,979
Idaho		42,731	882,882	35,190	148,001	333,278	67,459
Illinois	402,732	1,338,589	5,484,805	247,347	3,928,838	11,243,294	872,050
Indiana		160,355	2,003,887	152,208	863,901	3,750,804	352,216
Iowa		261,036	540,175	21,151	507,097	1,481,058	178,544
Kansas		218,923	1,004,760	37,875	515,950	1,754,167	187,337
Kentucky		89,110	3,704,112	282,797	1,576,882	555,133	100,901
Louisiana		229,002	2,166,621			1,236,404	149,923
Maine		56,632	613,784	47,754	386,485	437,995	35,349
Maryland		129,952	2,047,901	2,580	412,528	1,589,804	213,130
Massachusetts	153,712	1,218,319	4,685,460	135,345	1,592,343	22,325,883	589,062
Michigan	352,941	905,575	5,066,048	168,455	2,050,210	8,487,382	570,862
Minnesota	94,868	1,117,042	2,725,259	116,034	867,620	1,971,195	285,812
Mississippi		68,802	967,430		223,570	674,337	53,518

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART B. FEDERAL AID PAYMENTS TO INDIVIDUALS, ETC., WITHIN THE STATES—Continued

[Revised Mar. 9, 1964]

States, territories, etc.	Department of Health, Education, and Welfare		Department of Labor			National Science Foundation	
	Office of the Secretary: Juvenile delinquency and youth offenses	Vocational Rehabilitation Administration	Unemployment compensation for Federal employees and exservicemen	Area Redevelopment Act [5] [25]	Manpower development training activities [26]	Research grants awarded	Fellowship awards [27]
	(110)	(111)	(112)	(113)	(114)	(115)	(116)
Missouri	$163,777	$595,034	$2,283,966	$53,734	$2,334,198	$2,101.743	$171,122
Montana		76,634	541,434	41,343	260,264	358,695	43,801
Nebraska		142,652	391,220		261,783	442,815	96,172
Nevada			319,099	14,365	278,863	117,380	32,893
New Hampshire		12,291	505,345		163,961	626,669	51,384
New Jersey		265,161	3,910,422	378,562	1,151,330	4,488,215	366,644
New Mexico		13,593	1,064,751	178,529	231,348	1,189,332	63,969
New York	1,216,323	4,783,336	9,490,417	47,590	2,676,014	13,917,376	1,591,769
North Carolina	51,248	255,169	1,934,127	200,235	714,134	2,270,043	192,558
North Dakota		43,116	499,267	90,622	342,654	691,783	29,602
Ohio	90,763	858,738	7,952,784	136,608	1,646,381	4,857,173	508,185
Oklahoma		167,206	1,755,565	322,089	808,533	1,615,822	186,229
Oregon	129,579	253,619	1,474,213	8,427	500,518	2,594,034	141,523
Pennsylvania	19,634	846,343	13,795,489	156,511	3,921,712	8,936,972	727,607
Rhode Island	34,256	86,394	894,694	60,634	438,934	1,614,860	67,761
South Carolina		24,470	1,198,359	11,400	337,404	511,267	72,177
South Dakota		38,578	378,347	34,213	88,694	502,068	46,087
Tennessee		342,259	2,857,333	127,220	943,400	1,491,677	142,176
Texas	111,736	946,116	7,273,581	212,749	1,233,635	3,894,162	413,582
Utah	65,326	226,813	1,227,820		185,385	1,225,001	121,749
Vermont		57,662	237,430		255,014	67,535	57,396
Virginia		360,194	1,379,976	−872	774,374	1,197,767	141,159
Washington	112,526	449,437	5,765,691	33,932	480,346	3,001,056	220,358
West Virginia	131,091	108,580	2,192,989	141,981	413,666	498,004	85,269
Wisconsin		432,858	2,845,501	431,802	787,876	2,888,857	318,763
Wyoming			571,441		176,543	155,499	32,054
Puerto Rico		137,730	2,606,102	120,668	710,397	993,765	23,275
Virgin Islands			10,240		18,112		
Other territories, etc.[8]							
Undistributed to States, etc.					1,829		
Total	3,724,023	21,580,491	152,858,564	4,923,634	43,934,150	160,738,473	12,104,680

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States, territories, etc.	Atomic Energy Commission	Veterans' Administration		Total payments within States (part B)	Grand total (parts A and B)
	Fellowships and assistance to schools [28]	Automobiles, etc., for disabled veterans	Readjustment benefits and vocational rehabilitation		
	(117)	(118)	(119)	(120)	(121)
Alabama	$74,707	$14,369	$2,845,849	$32,108,229	$217,229,991
Alaska	7,655	1,600	43,561	6,482,266	62,466,903
Arizona	49,699	12,800	1,187,808	14,561,146	107,211,933
Arkansas	47,152	19,200	1,176,761	23,849,731	146,401,756
California	480,518	71,129	11,933,365	171,220,450	996,330,013
Colorado	27,617	25,457	1,392,001	40,349,617	163,916,050
Connecticut	84,903	12,800	891,559	24,336,596	121,739,174
Delaware	450		100,800	4,663,806	31,946,735
District of Columbia	294,475	19,200	1,571,600	24,591,858	107,820,775
Florida	104,969	59,035	4,773,823	73,733,314	253,668,691
Georgia	83,415	28,800	3,676,837	44,895,633	252,849,981
Hawaii	24,377	3,200	209,374	23,550,465	65,341,388
Idaho	6,736		273,947	17,033,085	69,645,696
Illinois	1,576,006	22,400	3,259,694	92,498,143	478,707,766
Indiana	151,333	20,275	1,609,671	40,957,824	184,301,681
Iowa	90,581	11,200	1,012,622	39,263,398	141,636,202
Kansas	94,005	4,800	990,616	40,050,326	127,788,263
Kentucky	85,298	12,795	1,138,438	29,751,836	203,108,550
Louisiana	129,005	8,000	2,001,776	38,071,292	290,888,394
Maine	19,467	12,750	275,718	10,227,171	60,785,853
Maryland	140,990	12,800	1,417,283	40,180,334	158,802,538
Massachusetts	528,805	23,895	2,794,760	100,486,027	306,694,559
Michigan	260,562	59,194	2,865,101	71,120,243	368,724,705
Minnesota	136,567	23,995	1,660,607	62,387,525	213,185,554
Mississippi	46,055	12,800	1,126,061	23,371,826	159,903,094
Missouri	61,207	20,800	2,262,027	53,964,249	270,100,950
Montana	11,502	3,200	351,032	17,903,539	84,436,110
Nebraska	23,975	11,200	600,064	29,525,274	100,146,965
Nevada	13,132		86,609	3,469,817	33,859,856
New Hampshire	37,950	12,800	232,885	6,822,849	35,405,362
New Jersey	66,065	28,800	1,880,363	35,048,918	212,943,183
New Mexico	37,042	3,200	673,518	17,537,593	108,385,350
New York	1,148,346	124,864	6,081,163	174,872,230	781,227,887
North Carolina	138,337	28,800	1,696,420	41,916,712	209,929,328
North Dakota	16,944	3,200	271,106	37,755,574	77,529,049
Ohio	167,091	42,779	3,442,226	68,924,647	442,504,183
Oklahoma	52,195	15,990	1,559,228	41,308,963	229,073,399
Oregon	41,495	8,000	998,168	27,246,254	165,298,031
Pennsylvania	255,185	59,143	4,983,590	100,920,953	524,494,289
Rhode Island	37,926	6,400	297,363	9,714,812	51,451,163

See footnotes at end of table.

FEDERAL AID TO STATES—Continued

TABLE 95.—*Expenditures made by the Government as direct payments to States under cooperative arrangements and expenditures within States which provided relief and other aid, fiscal year 1963*—Continued

PART B. FEDERAL AID PAYMENTS TO INDIVIDUALS, ETC., WITHIN THE STATES—Continued

[Revised Mar. 9, 1964]

States, territories, etc.	Atomic Energy Commission	Veterans' Administration		Total payments within States (part B)	Grand total (parts A and B)
	Fellowships and assistance to schools [55]	Automobiles, etc., for disabled veterans	Readjustment benefits and vocational rehabilitation		
	(117)	(118)	(119)	(120)	(121)
South Carolina	$24,302	$9,595	$1,120,474	$22,102,564	$114,330,810
South Dakota	18,166	3,200	252,047	27,326,237	74,765,454
Tennessee	386,045	33,500	1,822,827	40,060,667	251,975,210
Texas	166,029	36,800	5,586,924	105,553,234	550,142,007
Utah	32,901	3,200	1,009,751	19,209,415	90,848,328
Vermont	20,645	3,200	172,744	7,442,687	38,183,331
Virginia	113,284	9,600	1,137,672	24,335,492	205,717,069
Washington	148,057	22,092	1,964,233	40,523,243	206,507,771
West Virginia	44,080	11,062	712,979	12,006,171	110,777,195
Wisconsin	126,214	19,154	1,308,610	47,624,687	185,422,731
Wyoming	13,603		105,438	8,588,273	70,953,073
Puerto Rico	1,538,075	4,750	1,088,788	21,155,442	143,589,880
Virgin Islands				41,742	10,823,457
Other territories, etc.[8]			3,078,485	19,451,654	46,114,213
Undistributed to States, etc.				227,507,982	258,029,048
Total	9,285,110	1,017,823	95,006,366	2,379,604,032	10,976,285,910

[1] Excludes $500,000, "State experiment stations, Agricultural Research Service," included in col. 6.

[2] Excludes $1,434,026, "Cooperative extension work, payments and expenses, Extension Service," included in col. 6.

[3] Includes $58,875,807, value of commodities distributed to participating schools, and payments of $4,984,753 made directly to private schools. In addition the school lunch program is a recipient of some of the commodities shown under the appropriation "Removal of surplus agricultural commodities," and under "Commodity Credit Corporation, value of commodities donated."

[4] Consists of $27,235,140 "Payments to States, National Forests Fund"; $80,462, "Payments to school funds, Arizona and New Mexico, act June 20, 1910 (receipt limitation)"; and $125,366, "Payment to Minnesota (Cook Lake and St. Louis Counties) from the National Forests Fund."

[5] Credit amounts are refunds of advances in prior years.

[6] Includes $500,000, "State experiment stations, Agricultural Research Service"; $1,434,026, "Cooperative extension work, payments, and expenses, Extension Service" and $1,425,000, "Payments to States and possessions, Agricultrual Marketing Service."

[7] Consists of $14,986,277, "Forest protection and utilization, Forest Service" and $1,062,209, "Assistance to States for tree planting, Forest Service."

[8] Includes: American Samoa, Canal Zone, Guam, Trust Territory of the Pacific, and certain foreign countries.

[9] Includes $250,000, penalty mail costs for which a breakdown by States is unavailable.

[10] Includes $2,645,625, penalty mail costs and $6,520,181, retirement costs of cooperative extension agents.

[11] Consists of $38,086,896, "Watershed protection, Soil Conservation" and $19,409,410, for "Flood prevention, Soil Conservation Service."

[12] Cash payments to States to increase consumption of fluid milk by children in nonprofit schools. Net of refunds.

[13] Federal share of the value of food stamps redeemed under the pilot food stamp plan.

[14] Cost of food commodities acquired through price support operations.

[15] Includes $117,185, "Improvement of Pentagon road network (trust fund)" ($130,290, Virginia and −$13,105, undistributed to States, etc.).

[16] Consists of $36,355,896, forest highways, $2,110,671, public lands highways, and $95,114, "Surveys and plans, National Defense" (Ohio).

[17] Includes $476,848, "Grants for public facilities."

[18] See also pt. B, col. 74.

[19] See also col. 66.

[20] Consists of "$11,815,667 paid by Housing and Home Finance Agency; $584,965 paid by Department of Agriculture; $1,515,803 paid by Bureau of Public Roads, Department of Commerce; $940,545 paid by Department of Health, Education, and Welfare; and $281,000 paid by Department of the Interior."

[21] Consists of $2,550,000, "Colleges for agriculture and the mechanic arts," $11,950,000, "Further endowment of colleges for agriculture and the mechanic arts."

[22] Consists of $34,330,192, "Promotion and further development of vocational education, Office of Education," and $7,144,113, "Promotion of vocational education, act of Feb. 23, 1917, Office of Education."

[23] Includes $1,519,443, "Hospital and medical care" (Hawaii) and −$22,184, "Grant for poliomyelitis vaccination" (−$22,179, Indiana and −$5, Texas).

[24] Total excludes $252,557 paid to interstate agencies to control water pollution.

[25] Includes $315,310, "Construction of mental health facilities, Alaska"; −$227, "Surveys and planning for hospital construction" (South Dakota); and $270,050, "Construction of Indian health facilities" ($170,766, Alaska; $26,234, Montana; and $73,050, North Dakota).

[26] Created by reorganization of Secretary, Department of Health, Education, and Welfare, Jan. 28, 1963, to administer specified components and programs of the Social Security Administration.

[27] Consists of $14,634,244, "Federal aid in wildlife restoration, Bureau of Sport Fisheries and Wildlife" and $5,332,827, "Federal aid in fish restoration and management, Bureau of Sport Fisheries and Wildlife (receipt limitation)."

[28] Consists of $200,446, "Payments to States from grazing receipts, etc., public lands within grazing districts, Bureau of Land Management"; $249,328, "Payments to States (proceeds of sales), Bureau of Land Management (receipt limitation)"; $6,214, "Payments to Oklahoma (royalties), Bureau of Land Management (receipt limitation)"; $15,400,136, "Payments to counties, Oregon and California grant lands, Bureau of Land Management"; $400, "Payments to State of Alaska, income and proceeds, Alaska school lands, Bureau of Land Management"; $697,449, "Payments to Coos and Douglas Counties, Oreg., in lieu of taxes on Coos Bay wagon road grant lands, Bureau of Land Management"; $14,233, "Operation and maintenance, Bureau of Reclamation"; $917, "Payments to States (grazing fees), Bureau of Land Management"; $3,902, "Payments to States from grazing receipts, etc., public lands within grazing districts, miscellaneous, Bureau of Land Management"; $183,632, "Payments to States from grazing receipts, etc., public lands outside grazing districts, Bureau of Land Management"; $300,000 each to Arizona and Nevada, "Colorado River dam fund, Boulder Canyon project"; $27,287, "Payment in lieu of taxes on lands in Grand Teton National Park, National Park Service" (Wyoming); $92,255, "Payments due counties, National Grasslands, Bureau of Land Management"; $7,682,529, "Internal revenue collections for Virgin Islands, Office of Territories"; $108, "Payments to Alaska, Alaska game law, Bureau of Sport Fisheries and Wildlife"; and $702,852, "Payments to Alaska from Pribilof Islands fund, Bureau of Commerical Fisheries."

[29] Consists of $7,723,502, education and welfare services, and $749,372, resources management.

[30] Consists of $8,016,208 for postage and $90,556 for other expenditures.

[31] Consists of $24,740,393, "Grants-in-aid for airports" and $26,753,048, "Grants-in-aid for airports, liquidation of contract authorizations."

[32] Includes $2,152,422, "Mass transportation."

[33] Payment in lieu of taxes.

[34] Paid from "Medical care, Veterans' Administration."

[35] Paid from "General operating expenses, Veterans' Administration."

[36] Consists of $3,110,296, "Transitional grants to Alaska," and $141, "Alaska public works, Interior."

[37] Consists of $17,000,000, "Flood control payment, Army Corps of Engineers, Department of Defense"; and $9,749, "Construction and rehabilitation, Bureau of Reclamation, Department of the Interior."

[38] Open space land, Housing and Home Finance Agency.

[39] Low income housing, Housing and Home Finance Agency.

[40] Consists of $30,000,000, "Federal payment to District of Columbia"; $68,242, "Hospital facilities in the District of Columbia, General Services Administration"; $28,000, "Low income housing, Housing and Home Finance Agency"; and $300,000, Federal contribution to the District of Columbia, metropolitan area sanitary sewage works fund.

[41] Center for Cultural and Technical Interchange between East and West, Department of State.

[42] White House Conference on Aging, Department of Health, Education, and Welfare.

[43] Drainage of anthracite mines, Bureau of Mines, Department of the Interior.

[44] Loan program, Bureau of Reclamation, Department of the Interior.

[45] Land acquisition, National Capital park, parkway, and playground system, National Capital Planning Commission.

[46] Consists of $44,779,918, "Internal Revenue collections for Puerto Rico (shared revenues)"; −$200, "White House Conference on Aging, Department of Health, Education, and Welfare'; $12,009,323, "Refunds, transfers, and expenses of operation, Bureau of Customs, Treasury Department (shared revenues)."

[47] Refunds, transfers, and expenses of operation, Bureau of Customs, Treasury Department (shared revenues).

[48] Consists of $12,807,400, grants to American Samoa from "Administration of territories, Office of Territories" and $9,531,000, "Trust Territory of the Pacific Islands, Office of Territories."

[49] Consists of $216,899,307, "Agricultural conservation program" and $2,701,428, "Emergency conservation measures."

[50] On obligation basis.

[51] Includes $2,596,617 paid by Office of Education, Department of Health, Education, and Welfare for civil defense, adult education.

[52] Accounted for by the National Guard Bureau; breakdown by States unavailable.

[53] Includes −$12,918, "Sanitary engineering activities, Public Health Service, Department of Health, Education, and Welfare."

[54] Includes $25,000 paid from President's emergency fund (Florida).

[55] Includes $2,727,867 paid by Office of Education, Department of Health, Education, and Welfare.

[56] Includes $29,189,464 paid by Office of Education, Department of Health, Education, and Welfare.

[57] Based on State of permanent residence of recipient.

[58] Consists of $1,619,686, equipment grants; $1,523,054, student fellowships; $1,656,103, faculty training, and $4,486,267, material, services, and other. The fellowship awards are included in the State in which the awards are to be used. The assistance to schools is shown by the State of the recipient institution.

NOTE.—Compiled from figures furnished by the departments and agencies concerned pursuant to Treasury Department Circular No. 1014, Aug. 8, 1958 (see 1958 annual report, exhibit 70, p. 381).

CONCLUSION

In conclusion, I desire to reemphasize the fact that title VI of H.R. 7152, if enacted in its present form, will greatly impair and may even destroy the vast system of Federal financial assistance programs and activities by which the Federal Government has been providing essential assistance to State and local governmental jurisdictions to enable them to meet the needs of their people, for more than 100 years. These are programs which have been pouring billions of Federal dollars into the treasuries of State and local governments and into the hands of millions of individuals—programs which, in 1955, involved the substantial sum of $3.1 billion, and which, in 1965, are expected to reach the astronomical sum of $10.6 billion.

We have a serious constitutional obligation in this body. The Constitution vested in the Congress and the Congress alone the power to legislate. Yet we propose, in this measure, to delegate to executive branch officials the authority to terminate or refuse assistance—in other words, to legislate with respect to these activities, without meeting the constitutional requirements of such delegation. For nowhere in this title is the subject of the delegation adequately defined; and nowhere is there a recognizable standard or criterion to guide the agents to whom legislative powers are to be delegated. We do not know exactly which programs are covered; we do not know which phases of covered programs are involved; nor do we have any definitions in this title of the principal terms used, such as "benefits," "discrimination," and "Federal financial assistance." Nor, as I have shown earlier in my remarks, do the principal spokesmen for the executive branch know which programs and activities are involved.

Earlier in my remarks, I reviewed the leading, landmark cases on the subject of delegation. The remarks of Mr. Justice Harlan, in a recent case, *Arizona* v. *California*, 373 U.S. 546 (1963) are particularly appropriate to the situation which confronts us in title VI. In a dissenting opinion, he urged that a statute giving the Secretary of the Interior the power to apportion certain waters contained no standards defining the limits of his power. After analyzing the statute, he asserted that, without standards or yardsticks, Congress had made a gift to the Secretary of 1,500,000 acre-feet of water a year, to allocate virtually as he pleased. After citing the Panama and Schechter cases, which I have discussed earlier, he stated (626):

"The principle that authority granted by the legislature must be limited by adequate standards serves two primary functions vital to preserving the separation of powers required by the Constitution. First, it insures that the fundamental policy decisions in our society will be made not by an appointed official but by the body immediately responsible to the people. Second, it prevents judicial review from becoming merely an exercise at large by providing the courts with some measure against which to judge the official action that has been challenged."

The principles stated by Mr. Justice Harlan are precisely applicable to title VI. If this title is enacted into law, fundamental policy decisions would be vested in appointed officials rather than in the Congress which is immediately responsible to the people; and the courts would have no measure against which to judge the official action, in the event that it is challenged.

Concerning the question of review, authority would be given to unnamed individuals in the executive branch to promulgate rules, regulations, and orders of general applicability, with no standards, and with none of the safeguards provided for by the Administrative Procedure Act. With respect to judicial review of decisions to terminate or refuse Federal assistance, an aggrieved party, under section 10 of the Administrative Procedure Act, would be entitled, not to a de novo trial, but only to an examination of the findings and of such record as may exist, to determine whether the findings are substantiated by the evidence.

Finally, we have here a proposal which would amend retroactively, all of the vast number of statutes establishing Federal financial assistance programs and appropriating funds to enable them to function—a measure which would add a Powell amendment to every program now in existence or hereafter to be enacted, without regard to the fact that over the years, with minor exceptions, such amendments have been uniformly rejected in connection with consideration of the measures which authorized these programs.

As we continue our deliberations on this measure, let us not forget that every State and local governmental jurisdiction in the United States, and many millions of men, women, and children throughout the land, are dependent upon the funds provided by the Federal financial assistance programs. Let us not, under stress of emotion, ignore, either our constitutional responsibilities as the legislative branch of this Government, under the Constitution, or our responsibilities to the many millions of Americans who depend upon the funds involved to enable them to enjoy a better life.

Mr. SMATHERS. I yield myself 3 minutes.

First, Mr. President, I wish to commend the able Senator from Tennessee for offering this amendment. I cannot help but believe that this section, this particular bill, is as dangerous and sinister a piece of legislation as anybody in this body has ever heretofore considered. I think, as the able Senator from Arkansas has just concluded saying, it is an abdication of our legislative duties. We turn over to one man the authority which is actually given to us under the Constitution of the United States to appropriate money, and to pass out of our legislative committees the manner in which that money should be used. And yet we are giving up that authority.

The second instance of what we are doing is giving to a President of the United States a power that I do not think a President should want or should have. If my memory does not fail me, it was the late President of the United States, John Fitzgerald Kennedy, when asked about this section at a press conference, said:

> I do not have that authority, and I doubt if any President of the United States should have this kind of authority to cut off a program going into a total State.

This is a dangerous section. There is no definition of discrimination. As the able Senator from Tennessee has so ably and eloquently pointed out, if some person makes a claim of discrimination, just one person, under the authority of this bill, the whole State can be punished. Despite what the Senator from Rhode Island may think, all citizens of the South and all citizens in every State throughout the South, they, too, are taxpayers, and those who are innocent should not be punished along with those who are guilty. Yet this is the type and character of the program which we are going to have.

We say, and we hope, that a President would not take this authority or this power and use it unwisely, but he might.

And we have to continue to legislate having in mind that we are not always talking about what a reasonable person is going to do. We might some day get a President who might be vindictive, who might be unreasonable, and we give him the authority to exercise that vindictiveness and to act in an unreasonable manner, and we do so to our own shame and to our own loss.

I totally agree with the Senators from Tennessee and Arkansas. We are granting authority and power to a central government and I am afraid the day will come soon when we will regret we ever took this unnecessary and certainly this unwarranted step.

Mr. TALMADGE. I yield myself 3 minutes, Mr. President.

Of all of the unwise and vicious parts of this so-called civil rights bill, in my judgment title VI by far is the worst.

The Government of the United States at the present time is spending in excess of $100 billion a year. This money in various forms, finds itself into every State of the Union, into every county in the United States, and into every precinct throughout America. The one power that the Congress of the United States has, that it still controls, is the power of the purse. That is the power to levy taxes, and the power to appropriate money.

We are supposed to have in America three separate, distinct, and coordinate branches of Government.

It is the duty of the executive branch to execute laws. It is the duty of the legislative branch to make laws, to levy the taxes, and to appropriate the money. It is the duty of the judicial branch of our Government to determine what those laws are.

We have seen the executive branch and the judicial branch encroach on the legislative branch until our role in the Government today is virtually meaningless. We have seen the Federal courts interpret and misinterpret laws, including the Constitution itself. We have seen the executive branch issue various decrees and orders doing the same thing.

If Congress relinquishes its power to disburse more than $100 billion a year to every agency and department that the Government has, we might as well fold up shop and quit. Our function of Government at this date will have become meaningless.

How broad is this power, Mr. President? It amends every act that Congress has ever passed from the first Congress to the present time. It amends every legislative appropriation that Congress has on the statute books at the present time. It will take precedence over every act that Congress will pass in the future. It will amend every appropriation bill that Congress will enact as long as this statute remains on the books.

If Congress puts its stamp of approval on title VI, we will announce to the country and to the world that our function is no longer necessary, that we are

a useless appendage of Government, that we have appropriated money here, saying: "It is yours. Take it. Use it as you see fit."

I have seen Congress do some extremely foolish things. I hope that it has not sunk to such depths that its Members are willing to abolish themselves and create a veritable dictatorship, in which the Federal officers and executive officers of the Government can write rules and regulations as they see fit, spend Federal funds as they see fit, and withhold Federal funds as they see fit. If that time has come to pass, it is a sad day for the Senate, for Congress, and for the country.

Mr. President, how much time have I used?

The PRESIDING OFFICER. The Senator has consumed 3 minutes.

Mr. TALMADGE. I thank the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MORSE. Mr. President, I yield myself 1 minute. Title VI does not delegate legislative power. It exercises a function of legislative power. It is the passage of a stop order, the passage of a prohibition, the fixing of a legislative standard for the administration of all Federal programs.

We say to the other agencies of the Government: "You shall not spend money unconstitutionally for projects that are racially segregated." The Administrative Procedure Act is a barrier against any arbitrary or capricious act of power on the part of any administrator in carrying out these instructions from the Congress.

Congress has the duty as well as the power to pass a title that says: "You shall not spend Federal money for the continuation of racial discrimination.

That is the whole thing in a nutshell. We are exercising here that legislative function when we pass title VI.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. COOPER. Mr. President, this title has concerned me more than any other title in the bill. I have changed my opinion on it several times during the long debate on the bill.

Several weeks ago the senior Senator from Vermont [Mr. AIKEN] raised questions about title VI of the House bill. I joined in the discussion, and said that I did not think that any criteria had been established, in such a way that the agencies could properly administer this title.

The Senator from Rhode Island [Mr. PASTORE] said at the time that if I thought there were any questions about the standards provided in title VI, I ought to suggest criteria. I told him how I thought proper criteria could be established, and I proceeded to work on amendments to title VI.

I wrote the Attorney General, directing several questions to him. I received a letter from him, dated April 29, which was printed in the CONGRESSIONAL RECORD on May 5.

The Attorney General gave a very frank answer to the questions I had asked him. The Attorney General answered the questions sincerely and fairly. I felt on reading his letter that he, too, had questions about this title.

I agree wholly with the principle that money which is paid by all taxpayers should not be used to further discrimination, and that in any tax-supported program as well as in other activities no citizen should be discriminated against.

One chief question, however, remains. It is whether this title is in accord with our system of government and of justice, and if not, whether we should act coercively, against the innocent as well as the guilty, to secure a worthy objective.

Every title in the bill, except this title, is directed against individuals or governmental bodies—such as a State board of education—which can be clearly identified.

Every other title in the bill provides a specific procedure, and provides ultimately to the courts a procedure, which can be used against a particular individual, or against a governmental body, if discrimination is charged.

Every other title in the bill provides a definite sanction against an individual or governmental body if discrimination is proven.

All of this is in accord with our system of government and of law. It is to punish or apply a sanction against the individual guilty of wrongdoing, and no other.

My difficulty with this section is that it would establish an unusual sanction, one alien to our system of law. It is coercive, and in many instances the innocent—those who had no part in discrimination—would be those who would suffer. It would strike at the innocent, as well as the guilty.

It is true that title VI, as presented to the Senate in the Dirksen-Mansfield substitute, has been amended. I must say, Mr. President that these amendments to the House bill are, in substance, the amendments which I discussed in the conferences we have held and which I introduced in the Senate. These amendments have helped. But they do not overcome this basic objection to title VI—that it is coercive, and an unusual sanction which would strike at the innocent as well as the guilty

In his letter, in answer to my question as to whether funds for school lunch programs could be cut off under title VI, the Attorney General said, in substance: "We would prefer to use title IV to reach the school board. But if title IV fails, title VI would permit the school lunch program to be stopped." He was honest. It was not his decision, but the inevitable result of power given to some agency under title VI. This is just an example: In schools and colleges and other programs, Negro and white alike could be deprived of the benefits of programs though not guilty of discrimination.

Year after year, beginning in 1960, I have introduced bills to give the Attorney General power to institute suits against school boards, in the name of children who are the subjects of discrimination, to desegregate schools, as directed in the Brown case of 1954. Title IV in the bill, dealing with school desegregation, is almost identical to the bill, S. 1590, which Senator DODD and I introduced last year. In the State from which I come, Kentucky, I have taken a stand against school segregation, and all discrimination, during my life.

But I feel strongly about the procedures and the methods by which justice is sought. I feel strongly about procedures which could be used against the innocent as well as the guilty.

It has been charged in the past by the opponents of civil rights bills that civil rights bills are "force bills" and coercive bills. I have not thought so and I have supported civil rights bills. But title VI does have a character of coerciveness and force which is not consonant with our system of law and our system of justice. In weighing this truth against the correct principle that discrimination must not occur in programs supported by taxes, I can only say that we should not use a bad method, an unjust method, to correct another wrong.

We are asked: "What is your solution?" I answer that the Congress can write into its legislation dealing with specific programs, or groups of programs, criteria for their use, and procedures under the control of the Congress that the innocent and needy, Negro and white alike, shall not be punishment by the termination of a program.

I cannot vote for this title for these reasons.

Mr. RUSSELL. Mr. President, I yield myself 1 minute.

Mr. COOPER. May I say one other thing?

The amendments that are in this title, which do restrict it—I must be honest—go to, I think, the definite program of locality, the amendments which I offered, and which were accepted in the conferences which were held. Nevertheless, I come back to this basic principle. I think it must direct my vote.

Mr. RUSSELL. Mr. President——

The PRESIDING OFFICER. The Senator from Georgia.

Mr. RUSSELL. It is indeed fortunate that there is no law against inconsistency by Senators. I take this minute to note that Senators who a few years ago inveighed the loudest and longest against the doctrine of guilt by association are now vigorously promoting a policy of guilt by geography of residence. I vigorously opposed imputing guilt to any individual on account of his associates, but I consider that to be a more manly position—where men are involved—than to undertake to deny the aged, the babies and the blind benefits available to every other American similarly situated merely because they happen to live in a particular community. They are to be condemned and punished by reason of place of residence even though they may not even know the individual whose act was responsible for the hardship inflicted upon them.

Mr. MORSE. I yield myself 1 minute.

It has been said there are no standards in title VI. The "standard" is a very clear fact. Administrators have to find as a matter of fact that discrimination exists. All the protection of the Administrative Procedure Act is available to those that challenge that finding.

But talk about protecting the innocent: What we are trying to do is to pro-

tect the innocent who are being discriminated against in Federal projects that practice racial discrimination. Those are the innocent that are entitled to protection. It is about time that we protect the innocent Negroes of this country from federally supported and racially segregated projects that are imposed upon them. That is who title VI seeks to protect. My friend from Kentucky can get all the standards he wants from the administration of the act, under the Administrative Procedure Act, if a mistaken finding of discrimination is made. That is the test.

Mr. MONRONEY. Mr. President, I too am very worried about this title VI. I have voted rather consistently for a strong civil rights bill. My State I think has done as good a job as any State in the Union, on desegregation. We have been segregated in our schools since we became a State. In the Supreme Court decision, we began a desegregation program. We are rather proud that nearly one-third of our schools are desegregated.

As I read title VI, 601, it says:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

We have done a good job. We had 66⅔ percent of my State, in spite of the best efforts that Governors, legislatures, and others are making, in States that are still not free of segregation.

This gives no time. This gives no mediation. This gives no other provisions that are written in the other titles of the bill to try and resolve this matter, by conciliation, by trying to see if there is not some other way out.

As I read this bill, this matter becomes effective immediately. The school aid that is sent down to our impacted school districts, to other school programs, of all kinds—and they have been mentioned here—could be terminated within 30 or 60 days. And I do not believe we could be 100 percent desegregated in 30 or 60 days.

For that matter, in 1 or 2 or 3 years.

But we are on with the job. We have been trying to do the job.

What is this going to do? It is going to wreck almost all of the plans that have been made to carry on with an educational system and participate in the government.

Because of the commingling of Federal funds with county and school districts, it is not a simple matter to unscramble the egg. And I for one do not agree with my distinguished colleagues from New York, who say that this is a Federal gratuity that is given to the States. I think the States that receive this share do so in helping to build a strong United States. That is why we have had these Government programs of participation.

Certainly we should take a longer look at this. This long list put in by the distinguished senior Senator from Tennessee, of aid programs—and I think this is probably only half of them—is full of matters that we cannot tell about.

I noticed one good program in here that is very fine, the Indian health facility. That is a segregated program. It is appropriated to become one. Yet it is one we recognize as necessary. We cannot open this up and say it is segregated. This is open to all races, all creeds, And if we were writing into the bill, as the Senator from Kentucky has said, a list of the programs that we now know enough about to chop off Federal aid if violation is made, then I think we would at least be having a blueprint of how far we are diving into a morass, the results of which we cannot tell.

We are apt to be doing far more harm in many, many areas that we recognize by taking this bill, which will not add one single civil right to any person who today is being discriminated against because of racial reasons.

We are going to destroy the cooperation that we have had by States—and they have cooperated and produced good programs—by putting this into gear without mediation or delay, or without giving those States that are trying to do a job in desegregating a chance to get on with their program.

Certainly we must consider well language that "no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program * * *" when we have not yet, in spite of our best efforts, been able to resolve this desegregation program in our schools.

Mr. STENNIS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, the Congress of the United States for more than 100 years has been creating one Federal program after another and inviting and urging the States and subdivisions to come into that program on a joint basis, on a pattern of operations that suited the State and the Federal Government. And here, all of a sudden, in the afternoon when we reassemble, this is the first time this matter has had any real consideration by large numbers, for between 3 and 5 o'clock we propose to cut off every single one of those Federal aid programs that we have urged the States and the people to adopt for 100 years, and change entirely the formula.

This is a congressional matter, a legislative responsibility. If these standards that we set up in the Highway Act, vocational education, extension service, and all the others, should be changed, it is a legislative responsibility to bring them in here and change every one of them on their merits; not just hit every one of these programs in the head with a meat-ax and say "instanter."

For the moment, Mr. President, I want to point out now that there has been no greater dictatorship than for Congress to abruptly assert its responsibility here in setting forth formulas for Federal money and turn it all over to the heads of the Federal Government, even to the President of the United States, regardless of who he may be. Congress is here surrendering its responsibility, surrendering its legislative power, in turning it over to some other agency of the Government.

Mr. HOLLAND. Mr. President, the Senator is familiar with the ROTC system and the fact that the Federal law permitting Federal grants recognizes the fact that there are segregated separate schools in many States.

Mr. STENNIS. There should be hundreds of these programs that do the same.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. STENNIS. I yield myself 1 more minute.

The Senator has given an excellent illustration. But bringing it right down to the homes, to the little people, the poor people, this amendment, this title, will absolutely jerk the rug out from under and destroy the programs here that Congress itself has created.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GORE. On this question, Mr. President, I ask for yeas and nays.

The yeas and nays were ordered.

Mr. GORE. Mr. President, at the risk of being profligate with the 1 hour available to me for debate on the bill, and at the risk of trespassing upon the time of my colleagues, I shall speak again briefly. I feel so deeply about this amendment that if I could bring about a favorable result, I would gladly surrender all of my time. I feel deeply about this question, and I don't like to be put in the position—as the junior Senator from New York seems to be implying—of defending discrimination.

I agree with him that if there is any facet of our society in which there should be no discrimination it should be in the levying of taxes, and in the distribution and expenditure of public funds. I agree with that completely.

Mr. President, this is not a simple question, but the Senator provides what appears to be a simple answer. He says this provision of the bill is to put an end to it.

Now, let me take just a moment if I may to analyze how these aid programs operate. I have been associated with them. I have been a county official, and I have been a State official. I have had some experience in these programs. State funds, with which Federal funds are commingled, are distributed in accordance with State law. Rather generally, they are distributed pursuant to a formula. In the case of the distribution of school funds, the school population, the enrollment, is a basis for distribution. The funds for the school lunch program which the Federal Government provides go to the State and are distributed by the State.

Perhaps there is discrimination in some schools in a State. The senior Senator from Oklahoma expressed his pride that one-third of the schools in his State are now desegregated. I express some pride in the progress that my State has made. Nashville, Tenn., originated the grade-per-year plan. Nashville schools were desegregated up to the 7th grade last year. The 8th grade will be desegregated next year. And yet, because schools in Tennessee are not entirely desegregated in every county, if title VI is enacted into law, Federal funds for the school lunch program might be withheld from the entire State.

Let me call to the Senate's attention language on page 33 of the Dirksen substitute. I read:

> Compliance with any requirement adopted pursuant to this action may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient.

Who is the recipient of aid from the Federal Government? In the case of vocational extension work it is the State. In the case of the school lunch program the recipient is the State.

If one-third of Oklahoma, or as is the case now, if two-thirds of Oklahoma has not yet integrated all schools, how could this recipient, the State of Oklahoma, receive school aid funds if title VI is implemented?

I read from page 33, beginning on line 3:

> Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of Section 601 with respect to such program or activity by issuing rules, regulations—

And so forth. How is compliance achieved? By cutting off the aid to the recipient.

Mr. President, I denounce discrimination. I have denounced it in my State. I have announced publicly in Memphis, Tenn., that I would resolve doubts and vote for a reasonably strong public accommodations section, if unwise provisions were eliminated from the bill. I earnestly desire to amend this bill into such form that I could support it.

Title VI contains a provision that directs every Federal agency to proceed with rules and regulations to terminate aid to needy people, children, old people, crippled people, impoverished school districts, vocational training for those who need training and other beneficiaries. I say to you that this would be a travesty of justice. We must not do this. This is the guillotine approach. As the junior Senator from New York said, "We are going to put an end to it."

Mr. KEATING. Will the Senator yield on my time?

Mr. GORE. Not just now. I am using the Senator's own words.

Perhaps we should put an end to it. We are trying to in my State. We are moving with good will and, I think, making great progress.

Why should the Congress punish the innocent because we are not yet perfect? I have read in the press that other States apparently are not yet perfect either.

Mr. President, I do not defend discrimination. I plead for tolerance and justice and understanding. When Federal funds become commingled with State funds, and county funds, then State laws are involved, State requirements are involved, and you cannot, overnight, change the mores and customs of 100 years.

I plead with the Senate not to lower this guillotine upon the innocent, the needy, the worthy.

Mr. KEATING. I yield myself 1 minute to reply to the distinguished Senator.

If there was anything in my remarks that carried the impression that I believed that the Senator from Tennessee favored discrimination, I withdraw that. I know of his feelings in that regard.

I think he is badly mistaken, however, in making the effort to knock out this section. In his analysis he has failed to read the very important words written in italic which were added to the bill by the so-called substitute, which are that "such termination or refusal shall be limited to the particular political entity or part thereof as to whom such a finding"—namely, a finding after a chance to be heard, of the existence of discrimination—has been made.

In other words, the cut off of Federal funds will be limited to those specific school districts which deny some of the people in those districts the use of the Federal facilities, or the part of the State that so discriminates. That language was added in order to take care of the very matter to which the distinguished Senator from Tennessee refers. It is extremely necessary for the amendment of the Senator from Tennessee to be defeated, or else this bill will be seriously damaged.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Tennessee.

Mr. GORE. 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. 286 Leg.]

Aiken	Hart	Morton
Allott	Hartke	Moss
Anderson	Hickenlooper	Mundt
Bartlett	Hill	Muskie
Bayh	Holland	Nelson
Beall	Hruska	Neuberger
Bennett	Humphrey	Pastore
Bible	Inouye	Pearson
Boggs	Jackson	Pell
Brewster	Javits	Prouty
Burdick	Johnston	Proxmire
Byrd, Va.	Jordan, N.C.	Randolph
Byrd, W. Va.	Jordan, Idaho	Ribicoff
Cannon	Keating	Robertson
Carlson	Kennedy	Russell
Case	Kuchel	Scott
Church	Lausche	Simpson
Clark	Long, Mo.	Smathers
Cooper	Long, La.	Smith
Cotton	Magnuson	Sparkman
Curtis	Mansfield	Stennis
Dirksen	McCarthy	Symington
Dodd	McClellan	Talmadge
Dominick	McGee	Thurmond
Douglas	McGovern	Tower
Eastland	McIntyre	Walters
Edmondson	McNamara	Williams, N.J.
Ellender	Mechem	Williams, Del.
Ervin	Metcalf	Yarborough
Fong	Miller	Young, N. Dak.
Gore	Monroney	Young, Ohio
Gruening	Morse	

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

The question is on agreeing to the amendment offered by the Senator from Tennessee [Mr. GORE] to strike out title VI. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the negative). On this vote I have a pair with the junior Senator from Arkansas [Mr. FULBRIGHT]. If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. HUMPHREY. I announce that the Senator from Arkansas [Mr. FULBRIGHT] and the Senator from Arizona [Mr. HAYDEN] are absent on official business.

I also announce that the Senator from California [Mr. ENGLE] is absent because of illness.

I further announce that, if present and voting, the Senator from California [Mr. ENGLE] would vote "nay."

Mr. KUCHEL. I announce that the Senator from Massachusetts [Mr. SALTONSTALL] is necessarily absent and, if present and voting, would vote "nay."

The Senator from Arizona [Mr. GOLDWATER] is detained on official business.

The result was announced—yeas 25, nays 69, as follows:

[No. 287 Leg.]

YEAS—25

Byrd, Va.	Hruska	Russell
Byrd, W. Va.	Johnston	Smathers
Cooper	Jordan, N.C.	Sparkman
Eastland	Long, La.	Stennis
Ellender	McClellan	Talmadge
Ervin	Mechem	Thurmond
Gore	Monroney	Walters
Hill	Morton	
Holland	Robertson	

NAYS—69

Aiken	Fong	Morse
Allott	Gruening	Moss
Anderson	Hart	Mundt
Bartlett	Hartke	Muskie
Bayh	Hickenlooper	Nelson
Beall	Humphrey	Neuberger
Bennett	Inouye	Pastore
Bible	Jackson	Pearson
Boggs	Javits	Pell
Brewster	Jordan, Idaho	Prouty
Burdick	Keating	Proxmire
Cannon	Kennedy	Randolph
Carlson	Kuchel	Ribicoff
Case	Lausche	Scott
Church	Long, Mo.	Simpson
Clark	Magnuson	Smith
Cotton	McCarthy	Symington
Curtis	McGee	Tower
Dirksen	McGovern	Williams, N.J.
Dodd	McIntyre	Williams, Del.
Dominick	McNamara	Yarborough
Douglas	Metcalf	Young, N. Dak.
Edmondson	Miller	Young, Ohio

NOT VOTING—6

Engle	Goldwater	Mansfield
Fulbright	Hayden	Saltonstall

So Mr. GORE's amendment was rejected.

Mr. PASTORE. Mr. President, I move that the Senate reconsider the vote by which the amendment was rejected.

Mr. HUMPHREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

IN DEFENSE OF BUTTE

Mr. MANSFIELD. Mr. President, I yield myself 1 minute.

Butte, Mont., the home of the "richest hill on earth" and the home of Mrs. Mansfield and myself for some of the happiest years of our lives, is perhaps the State's best known city with a most colorful past. The city of Butte and the county of Silver Bow have had some serious economic difficulties in the past several years, and this has given rise to a number of comments and predictions that Butte is through, that Butte is a dying city. As one who loves Butte, who has lived there and attended the School of Mines and worked in the mines, I can say that these statements could not be

further from the truth. Butte and the surrounding area are going through an economic adjustment, but the situation is much improved, and the future is very bright. Butte may not be as large as it has been in the past, but it will always be a busy, picturesque, and vital center of activity in the Treasure State. All it takes is a visit to western Montana to find out for yourself.

The most recent potshot that has been taken appeared in a recent issue of the National Observer which referred to Butte as something like "a dreary little city." The writer, who obviously gave the situation a rather limited view, talked of the city's drab appearance. These statements are deeply resented by the citizens of Butte and by me, and I wish to join with them in refuting these inaccurate and confused observations.

The June 7 issue of the Montana Standard contains an excellent rebuttal to this story. I ask unanimous consent that it be printed at the conclusion of my remarks in the CONGRESSIONAL RECORD.

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

[From the Butte (Mont.) Standard-Post, June 7, 1964]

TAPROOM REPORTER "ANALYZES BUTTE"—POTSHOTS FROM "OASIS" RESENTED BY CITIZENS

"Pictures don't lie" is a common axiom.

Take a good look at the accompanying picture. Does it illustrate the following description of Butte?

"In this dreary little city * * *. But now these is an atmosphere of age and tiredness about the place, a feeling that the very earth you walk on is worn out from too much mining, that the air you breathe has gone stale from too much steam and ore dust and that even the people are running low on energy.

"Any long traveler who has seen the coal-dust poverty of Weirton, W. Va., or the silent railyards in Jersey Shore, Pa., will quickly put Butte in the same sorry league.

"The city's drab appearance."

These statements, taken from context but not altering their meaning, appear in The National Observer, a weekly newspaper published by Dow Jones & Co., Inc., who also put out the more factual Wall Street Journal. The article is illustrated with the picture shown here. It was ordered by the National Observer with the instruction that it be a deserted street scene, which the local photographer found impossible.

The inconsistency is immediately evident, but it apparently was overlooked by the editors of the reputable publication. As for the author of the article, Hunter S. Thompson, he must be blinded by inexperience. Or was it the dim lights of the Gun Room with its softly illuminated bar in the Finlen Hotel?

He writes with attachment of the place: "Every night the Gun Room is full of young couples and whole tables of excited secretaries," and again "the city's drab appearance will eventually drive a visitor back to the Gun Room. It is something of an oasis."

In the taproom he interviewed a traveling musician, not a miner, and quoted him as saying. "A month in Butte is like a month in a mine shaft." How would he know?

To get another appraisal of Butte, he quotes a lumberjack, not a miner, at the bus depot, as saying, "This town's a loser. I came looking for work, but no luck." The confused lumberjack got off at the wrong town.

We could go on, but you can easily draw the conclusion this article is unfair, hits below the belt.

The author does make it clear, however, that civic leaders are optimistic about Butte's future, and confesses lamely that he could be wrong about the city's prospects.

We are fed up with discrediting and distorted accounts of Butte emanating from taprooms and taverns, where the authors' vision is limited.

These stories, replete with the sin of error or manipulation, are outright attempts to picture, and enlarge upon, those unfavorable conditions which are a part of every old city, and deliberately to ignore any sign of progress and prosperity. In this respect they are deceptive and deplorable.

The people of Butte vehemently resent these Gun Room potshots at their community. There are much better, more rewarding, vantage points from which to view this lively and progressive metropolis.

GREAT FALLS, MONT., POLICEMAN HONORED

Mr. MANSFIELD. Mr. President, I am pleased to inform the Senate that Joseph R. McQuire, of Great Falls, Mont., has been selected as Police Officer of the Year. Special recognition was paid to this young man by the Exchange Club of this Montana city.

The circumstances surrounding the selection of Joseph McQuire are somewhat ironic. Early on September 26, 1963, Officer McQuire was one of the many assigned to aid in the protection of President John F. Kennedy on his visit to Great Falls. In fact, he was assigned to the home of my father where President Kennedy paid a brief visit. The visit of our late President to Great Falls was without incident. This was due in part to the excellent cooperation of the local law enforcement authorities. Soon after President Kennedy departed, Officer McQuire was dispatched to investigate a complaint of shoplifting. The suspect resisted arrest and made an attempt on the life of Officer McQuire by firing and wounding him seriously. During this difficult situation, the officer displayed the qualities which are so important to a police officer whose job it is to protect the citizens of his community.

After hospitalization and convalescence, Officer McQuire has now returned to work in a limited capacity.

I wish to congratulate Officer McQuire and to express the hope that he will soon be completely recovered from his injuries.

Mr. President, I ask unanimous consent to have printed at the conclusion of my remarks an article published in the June 4 issue of the Great Falls Tribune.

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

[From the Great Falls (Mont.) Tribune, June 4, 1964]

POLICEMAN J. R. MCQUIRE HONORED BY EXCHANGE CLUB

Joseph R. McQuire, 25, 2121 Central Avenue, Great Falls police officer wounded September 26, 1963, in the line of duty, Wednesday was named Police Officer of the Year by the Great Falls Exchange Club. McQuire was wounded on the afternoon of the day President Kennedy visited Great Falls.

A policeman for 2 years and 3 months, McQuire is a native of Great Falls, is married, and has five children.

"On September 26, 1963," the Exchange Club citation reads, "Officer McQuire was dispatched to investigate a complaint relative to a report that an armed man had been caught shoplifting and had run from the scene of the incident.

"Officer McQuire traced the suspect to 214 Second Avenue North, an apartment building, and made contact with the suspect on the roof of the apartment building, as the suspect was attempting to evade apprehension. Officer McQuire faced the suspect, hoping that he would relinquish his weapon and submit to arrest without violence. The suspect reacted violently and with obvious intent to take the life of the officer by firing and wounding him. Although seriously wounded as a result of having been struck by several bullets, Officer McQuire returned the fire of the subject until losing consciousness.

"During this incident it is felt that Officer McQuire demonstrated his belief in the oath he had taken as a police officer. It is also felt that Officer McQuire displayed the qualities which are necessary and essential for a police officer to possess to insure the citizens of our community that they may conduct their daily lives and activities with a maximum of freedom from criminal transgressions from those who fail to recognize the laws of society.

"It is gratifying that this experience has not affected Joe's attitude toward society and toward his job; he has not exhibited bitterness in any manner, although the wounds he received have caused him considerable suffering and anguish.

"Officer McQuire has been returned to work at his own request in a limited physical capacity due to the fact that he has not completely recovered from his injuries."

CIVIL RIGHTS ACT OF 1963

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

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute submitted by the Senator from Illinois [Mr. DIRKSEN] and the Senator from Montana [Mr. MANSFIELD].

THE JOURNAL

Mr. MANSFIELD. Mr. President, I yield myself one half a minute. I ask unanimous consent that the Journal of Monday, June 8, and Tuesday, June 9, be considered as read.

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

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its day's work—very shortly—it stands in recess until 10 o'clock Thursday morning.

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

TRANSACTION OF ROUTINE BUSINESS

By unanimous consent, the following routine business was transacted:

EXECUTIVE COMMUNICATIONS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT ON USE OF FUNDS FOR THE CONSTRUCTION OF RESEARCH FACILITIES AT CORNELL UNIVERSITY, ITHACA, N.Y.

A letter from the Administrator, National Aeronautics and Space Administration, Washington, D.C., reporting, pursuant to law, on the use of funds of that Administration for the construction of research facilities at Cornell University, Ithaca, N.Y.; to the Committee on Aeronautical and Space Sciences.

ACCEPTANCE BY MEMBERS OF THE ARMED FORCES OF CERTAIN AWARDS FROM FOREIGN GOVERNMENTS

A letter from the Secretary of the Army, transmitting a draft of proposed legislation to amend title 10, United States Code, to permit members of the Armed Forces to accept fellowships, scholarships, or grants offered by a foreign government (with an accompanying paper); to the Committee on Armed Services.

AUDIT REPORT ON U.S. STUDY COMMISSION, SOUTHEAST RIVER BASINS

A letter from the Comptroller General of the United States, transmitting, pursuant to law, an audit report on the U.S. Study Commission, Southeast River Basins, for the period August 28, 1958, through December 23, 1963 (with an accompanying report); to the Committee on Government Operations.

REPORT ON OVERSTATEMENT OF CONTRACT TARGET PRICE NEGOTIATED WITH AMERICAN BOSCH ARMA CORP.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the overstatement of contract target price negotiated with American Bosch Arma Corp., Arma Division, Garden City, N.Y., Department of the Air Force, dated June 1964 (with an accompanying report); to the Committee on Government Operations.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, and referred as indicated:

By the ACTING PRESIDENT pro tempore:

The petition of Mrs. John Bradley Thomas, of Portsmouth, Va., relating to prayer in the public schools; to the Committee on the Judiciary.

A telegram in the nature of a petition signed by William E. Cook, of Van Nuys, Calif., relating to the failure of the U.S. Supreme Court to review a U.S. court of appeals decision which reversed a fine of $120,000 against the Communist Party for failure to register its membership; to the Committee on the Judiciary.

CIVIL RIGHTS—AMENDMENTS

AMENDMENT NO. 1047

Mr. ERVIN submitted an amendment, intended to be proposed by him, to amendment No. 656, submitted by Mr. DIRKSEN (for himself and other Senators) to H.R. 7152, the so-called civil rights bill, which was ordered to lie on the table and to be printed.

AMENDMENT NO. 1048

Mr. ERVIN also submitted an amendment, intended to be proposed by him, to H.R. 7152, the so-called civil rights bill, which was ordered to lie on the table and to be printed.

AMENDMENT NO. 1049

Mr. LONG of Louisiana submitted an amendment (No. 1049), intended to be proposed by him, to H.R. 7152, the so-called civil rights bill, which was ordered to lie on the table and to be printed.

AMENDMENT NO. 1050

Mr. LONG of Louisiana also submitted an amendment (No. 1050), intended to be proposed by him, to the amendment in the nature of a substitute (No. 656), intended to be proposed by Mr. DIRKSEN (for himself and other Senators) to H.R. 7152, the so-called civil rights bill, which was ordered to lie on the table and to be printed.

AMENDMENT NO. 1051

Mr. BENNETT submitted an amendment (No. 1051), intended to be proposed by him, to the amendment in the nature of a substitute (No. 656) intended to be proposed by Mr. DIRKSEN (for himself and other Senators) to H.R. 7152, the so-called civil rights bill, which was ordered to lie on the table and to be printed.

AMENDMENT NO. 1052

Mr. DIRKSEN (for himself, Mr. MANSFIELD, Mr. HUMPHREY, and Mr. KUCHEL) submitted an amendment (No. 1052), in the nature of a substitute, intended to be proposed by them, jointly, to amendment No. 656, submitted by him (for himself and other Senators) to H.R. 7152, the so-called civil rights bill, which was ordered to lie on the table and to be printed.

AMENDMENT NO. 1053

Mr. COOPER submitted an amendment (No. 1053), intended to be proposed by him, to the amendment in the nature of a substitute (No. 656) intended to be proposed by Mr. DIRKSEN (for himself and other Senators) to H.R. 7152, the so-called civil rights bill, which was ordered to lie on the table and to be printed.

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. HUMPHREY. Mr. President, I yield myself half a minute. I ask the majority leader if I correctly understand that it is not intended to have additional votes tonight.

Mr. MANSFIELD. The Senator's understanding is correct. It is not intended to have additional votes tonight.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. McCLELLAN. Let us go home.

RECESS UNTIL 10 A.M. TOMORROW

Mr. HUMPHREY. Mr. President, in accordance with the previous order, I move that the Senate stand in recess until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 5 o'clock and 15 minutes p.m.) the Senate took a recess, in accordance with the previous order, until tomorrow, Thursday, June 11, 1964, at 10 o'clock a.m.

EXTENSIONS OF REMARKS

Conference of Mayors of Puerto Rico

EXTENSION OF REMARKS
OF
HON. EMANUEL CELLER
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Wednesday, June 10, 1964

Mr. CELLER. Mr. Speaker, under leave to extend my remarks in the CONGRESSIONAL RECORD, I am pleased to have the opportunity to insert a statement in tribute to the people of Puerto Rico and its mayors, which I made at the Conference of Mayors of Puerto Rico, Monday, June 8, 1964, at the Hilton Hotel in New York City. My statement follows:

In 1940 nobody believed that the good people of Puerto Rico could take hold of themselves and of their land to make the Commonwealth of Puerto Rico a showcase of development. Puerto Rico lacked capital, national resources, a managerial class, and dwelt withal with a feeling of helplessness. Today that is all changed and "Operation Bootstrap" proves what a free people can do when, having marked out their goal, they move toward it, despite the heaviest odds against them.

Social and economic progress in Puerto Rico are the result of what people themselves did. As all the leaders of Puerto Rico have pointed out, for more than 40 years Puerto Rico had access to U.S. investments, there were no barriers to trade, but nothing happened until after 1940 when the people of Puerto Rico themselves decided to do something. True, the U.S. Government provided assistance, but the people of Puerto Rico had the imagination and the vigor and the willingness to do the work. All this they did as free people, proving in the best tradition of democracy that the state is the servant of the people.

Underdeveloped countries throughout the world can learn this crucial lesson—that freedom and social and economic security are not incompatible.

The beautiful land of Puerto Rico has moved into its own way of life. With their minds, hearts, and muscle they shape their