LYNCHING 106
Hearings - 1918 - 1950

CRIME OF LYNCHING

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

EIGHTIETH CONGRESS

SECOND SESSION

ON

S. 42, S. 1352, and S. 1465

BILLS TO ASSURE TO PERSONS WITHIN THE JURISDICTION OF EVERY STATE DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS, AND TO PREVENT THE CRIME OF LYNCHING, AND FOR OTHER PURPOSES

JANUARY 19, 20, 21, FEBRUARY 2, 18, AND 20, 1948

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CRIME OF LYNCHING

MONDAY, JANUARY 19, 1948

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 10 a. m., pursuant to call, in room 424, Senate Office Building, Senator Homer Ferguson, chairman of the subcommittee, presiding.

Present: Senators Ferguson (chairman of the subcommittee), Revercomb, and Eastland.

Present also: Senators Hawkes and Morse; Robert Barnes Young, committee staff.

Senator FERGUSON. The committee will come to order.

This morning the subcommittee has met to consider three bills, S. 42, S. 1352, and S. 1465. I shall ask that the bills be inserted in the record at this point.

(S. 42, S. 1352, and S. 1465 are as follows:)

[S. 42, 80th Cong., 1st sess.]

A BILL To assure to persons within the jurisdiction of every State due process of law and equal protection of the laws, and to prevent the crime of lynching

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act are enacted in exercise of the power of Congress to enforce, by appropriate legislation, the provisions of the fourteenth amendment to the Constitution of the United States and for the purpose of better assuring by the several States under said amendment equal protection and due process of law to all persons charged with or suspected or convicted of any offense within their jurisdiction.

SEC. 2. Any assemblage of three or more persons which exercises or attempts to exercise by physical violence and without authority of law any power of correction or punishment over any citizen or citizens or other person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such citizen or citizens, person or persons, shall constitute a "mob" within the meaning of this Act. Any such violence by a mob which results in the death or maiming of the victim or victims thereof shall constitute "lynching" within the meaning of this Act.

SEC. 3. Whenever a lynching occurs, any officer or employee of a State or any governmental subdivision thereof who is charged with the duty or possesses the authority to protect such person or persons from lynching, and neglects or refuses to make all diligent efforts to protect such person or persons from lynching, or who has custody of the person or persons lynched and neglects or refuses to make all diligent efforts to protect such person or persons from lynching, or who is charged with the duty or possesses the authority to apprehend, keep in custody, or prosecute the members or any member of the lynching mob and neglects or refuses to make diligent efforts so to do, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceed five years, or by both such fine and imprisonment.

SEC 4. Whenever a lynching of any person or persons occurs and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who was charged with the duty or possessed the authority to protect such person or persons from lynching, or who had custody of the person or persons lynched, has neglected or refused to make all diligent efforts to protect such person or persons from lynching, or has neglected or refused to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, the Attorney General of the United States shall cause an investigation to be made to inquire whether there has been any violation of this Act.

SEC. 5. (a) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be civilly liable for any lynching which occurs within its territorial jurisdiction or which follows upon seizure and abduction of the victim or victims by a mob within its territorial jurisdiction, in every case in which any officer (or officers) of that governmental subdivision charged with the duty or possessing the authority of preserving the peace, or citizens thereof when called upon by any such officer, have neglected or refused to use all diligence and all powers vested in them for the protection of the person or persons lynched. In every such case the culpable governmental subdivision shall be liable to each person injured, or to his or her next of kin if such injury results in death, for a sum not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided*, That the satisfaction of judgment against one governmental subdivision responsible for a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching.

(b) Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part. Such action shall be brought and prosecuted by the Attorney General of the United States or his duly authorized representative in the name of the United States for the use of the real party in interest, or, if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment is not paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such a governmental subdivision. Any officer of such governmental subdivision or any person who disobeys or fails to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(c) Any judge of the United States district court for the judicial district wherein any suit is instituted under the provisions of this Act may by order direct that such suit be tried in any division of such district as he may designate in such order.

(d) In any action instituted under this section, a showing either (1) that any peace officer or officers of the defendant governmental subdivision after timely notice of danger of mob violence failed to provide protection for the person subsequently lynched; or (2) that apprehension of danger of mob violence was general within the community where the abduction or lynching occurred; or (3) of any other circumstance or circumstances from which the trier of fact might reasonably conclude that the governmental subdivision had failed to use all diligence to protect the person or persons abducted or lynched, shall be prima facie evidence of liability.

SEC. 6. If any particular provision, sentence, or clause, or provisions, sentences, or clauses, of this Act, or the application thereof to any particular person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

[S 1352, 80th Cong, 1st sess.]

A BILL To declare certain rights of citizens of the United States, and for the better assurance of the protection of such citizens and other persons within the several States from mob violence and lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The Congress hereby makes the following findings:

(a) The duty of each State to refrain from depriving any person of life, liberty, or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws, imposes on all States the obligation to exercise their police powers in a manner which will protect all persons equally without discrimination because of race, creed, color, national origin, ancestry, language, or religion. A State deprives a person of life, liberty, or property without due process of law and denies him the equal protection of the laws when the State's inaction has the effect of a discriminatory withholding of protection.

When a State, by the malfeasance or nonfeasance of its officials, permits persons not expressly designated as its agents to punish any person within its jurisriction for crimes or alleged crimes, without trial or other due process of law, and condones such conduct by participating in or facilitating such conduct or by failing to punish either those of its officials who permit such conduct or those guilty of the conduct, the State effectively deprives the victims of such conduct of life, liberty, or property without due process of law and denies to them the equal protection of the laws.

Lynching constitutes an organized effort not only to punish the persons lynched but also to terrorize the groups, in the community or elsewhere, of which the persons lynched are members by reason of their race, creed, color, national origin, ancestry, language, or religion, and thus to deny to all members of such groups, and to prevent them from exercising, the rights guaranteed to them by the Constitution and laws of the United States. By condoning lynching, the State makes the lynching, punishment without due process of law, or other denial of the equal protection of the laws its own act and gives the color and authority of State law to the acts of those guilty of the lynching, punishment, or other denial.

(b) When persons within a State are deprived by a State or by individuals within a State, with or without condonation by a State or its officials, of equal protection of the laws because of race, color, creed, national origin, ancestry, language, or religion, they are denied, or limited in the exercise of, human rights and fundamental freedoms.

(c) The law of nations requires that every person be secure against violence to himself or his property by reason of his race, creed, color, national origin, ancestry, language, or religion.

SEC. 2. The Congress finds that the succeeding provisions of this Act are necessary in order to accomplish the following purposes:

(a) To enforce the provisions of article XIV, section 1, of the amendments to the Constitution of the United States;

(b) To promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, language, or religion, in accordance with the treaty obligations assumed by the United States under article 55 and article 56 of the United Nations Charter; and

(c) To define and punish offenses against the law of nations.

RIGHT TO BE FREE OF LYNCHING

SEC. 3. It is hereby declared that the right to be free from lynching is a right of citizens of the United States, accruing to them by virtue of such citizenship. Such right is in addition to any similar rights they may have as citizens of any of the several States or as persons within their jurisdiction.

DEFINITIONS

SEC. 4. Any assemblage of two or more persons which shall, without authority of law, (a) commit or attempt to commit violence upon any person or persons or on his or their property because of his or their race, creed, color, national origin, ancestry, language, or religion, or (b) exercise or attempt to exercise, by physical violence against person or property, any power of correction or punishment over any citizen or citizens of the United States or other person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such citizen or citizens, person or persons, or of imposing a punishment not authorized by law, shall constitute a lynch mob within the meaning of this Act. Any such violence by a lynch mob shall constitute lynching within the meaning of this Act.

PUNISHMENT FOR LYNCHING

SEC. 5. Any person whether or not a member of a lynch mob who willfully instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, and any member of a lynch mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $10,000 or by imprisonment not exceeding twenty years, or by both such fine and imprisonment.

PUNISHMENT FOR FAILURE TO PREVENT LYNCHING

SEC. 6. Whenever a lynching shall occur, any officer or employee of a State or any governmental subdivision thereof, who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent the lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to prevent the lynching, and any officer or employee of a State or governmental subdivision thereof who shall have had custody of the person or persons lynched and shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

SEC. 7. Whenever a lynching of any person or persons shall occur, and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching, or who shall have had custody of the person or persons lynched, has neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching or that any officer or employee of a State or governmental subdivision thereof, in violation of his duty as such officer or employee, has neglected, refused, or willfully failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, the Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violation of this Act.

COMPENSATION FOR VICTIMS OF LYNCHING

SEC. 8. (1) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction. Every such governmental subdivision shall also be responsible for any lynching which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction, irrespective of whether such lynching occurs within its territorial jurisdiction or not. Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each individual who suffers injury to his or her person or property, or to his or her next of kin if such injury results in death, for a sum of not less than $2,000 and not more than

$10,000 as monetary compensation for such injury or death: *Provided, however,* That the governmental subdivision may prove by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty or preserving the peace, and the citizens thereof, when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further,* That the satisfaction of judgment against one governmental subdivision responsible for a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching by the individual who has obtained satisfaction of his judgment.

(2) Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part. Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or, if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such governmental subdivision. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(3) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district as he may designate in such order: *Provided,* That no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

SEC. 9. The crime defined in and punishable under the Act of June 22, 1932 (47 Stat. 326), as amended by the Act of May 18, 1934 (48 Stat. 781), shall include the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, correction, or intimidation.

SEVERABILITY CLAUSE

SEC. 10. The essential purposes of this Act being the safeguarding of rights of citizens of the United States and the furtherance of protection of the lives, persons, and property of such citizens and other persons against unlawful and violent interference with or prevention of the orderly processes of justice, and against possible dereliction of duty in this respect by States, or any governmental subdivision thereof, or any officer or employee of either a State or governmental subdivision thereof, if any particular provision, sentence, or clause, or provisions, sentences, or clauses, of this Act or the application thereof to any particular person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or other circumstances, shall not be affected thereby.

SHORT TITLE

SEC. 11. This Act may be cited as the "Federal Anti-Lynching Act."

[S. 1465, 80th Cong., 1st sess.]

A BILL For the better assurance of the protection of persons within the several States from mob violence and lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act are enacted in exercise of the power of Congress to enforce, by appropriate legislation, the provisions of the fourteenth amendment of the Constitution of the United States and for the purpose of better assuring under said amendment protection to the lives and persons of citizens of the United States and equal protection of the

laws and due process of law to all persons within the jurisdiction of the several States. A State shall be deemed to have denied to any victim or victims of lynching equal protection of the laws and due process of law whenever that State or any legally competent governmental subdivision thereof shall have failed, neglected, or refused to employ the lawful means at its disposal for the protection of that person or those persons against lynching or against seizure and abduction followed by lynching.

SEC. 2. Any assemblage of three or more persons which shall exercise or attempt to exercise by physical violence and without authority of law any power of correction or punishment over any citizen or citizens of the United States or other person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such citizen or citizens, person or persons, shall constitute a "mob" within the meaning of this Act. Any such violence by a mob which causes the death or serious bodily injury of the victim or victims thereof shall constitute "lynching" within the meaning of this Act: *Provided, however*, That "lynching" shall not be deemed to include violence occurring between members of groups of lawbreakers such as are commonly designated as gangsters or racketeers, nor violence occurring during the course of picketing or boycotting incidental to any "labor dispute" as that term is defined and used in the Act of March 23, 1932 (47 Stat. 70).

SEC. 3. Whenever a lynching of any person or persons shall occur, any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who shall have had custody of the person or persons lynched and shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

SEC. 4. Whenever a lynching of any person or persons shall occur, and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching, or who shall have had custody of the person or persons lynched, has neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching or that any officer or employee of a State or governmental subdivision thereof, in violation of his duty as such officer or employee, has neglected, refused, or willfully failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, the Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violation of this Act.

SEC. 5. (1) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction. Every such governmental subdivision shall also be responsible for any lynching occurring outside of its territorial jurisdiction, whether within or without the same State, which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction. Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each person injured, or to his or her next of kin if such injury results in death, for a sum not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided, however*, That the governmental subdivision may prove by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and the citizens thereof when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further*, That the satisfaction of judgment against one governmental subdivision responsible for

a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching.

(2) Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part. Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such a governmental subdivision. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(3) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district as he may designate in such order: *Provided*, That no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

SEC. 6. The crime defined in and punishable under the Act of June 22, 1932 (47 Stat. 326), as amended by the Act of May 18, 1934 (48 Stat. 781), shall include the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, correction, or intimidation.

SEC. 7. The essential purpose of this Act being the furtherance of protection of the lives and persons of citizens of the United States and other persons against unlawful and violent interference with or prevention of the orderly processes of justice, and against possible dereliction of duty in this respect by States, or any governmental subdivision thereof, or any officer or employee of either a State or governmental subdivision thereof, if any particular provision, sentence, or clause, or provisions, sentences, or clauses, or this Act or the application thereof to any particular person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Senator FERGUSON. The Senators who are going to testify this morning have other engagements, so I will explain to Senator Revercomb when he comes in, and he will be able to read this part of the record.

Senator Hawkes, do you desire to make a statement?

STATEMENT OF ALBERT W. HAWKES, A UNITED STATES SENATOR FROM THE STATE OF NEW JERSEY

Senator HAWKES. Yes, Senator; I appreciate very much the opportunity to make a statement. I will try to be reasonably brief.

I want to say that I welcome the opportunity to speak briefly this morning to you about the bill, S. 42, which I introduced on January 6, 1947, shortly after the first session of the Eightieth Congress convened.

S. 42 is a bill, the purpose of which is to prevent the crime of lynching, and represents legislation of a type in which I have been deeply interested all my life, and particularly since I became a Member of the United States Senate.

I first introduced this bill on March 22, 1945, during the Seventy-ninth Congress. It then bore the number S. 778. It was referred to

the Senate Committee on the Judiciary but failed to receive action before that group and died with the adjournment of the Seventy-ninth Congress.

I believe that every American, regardless of race, creed, or color, is entitled to complete protection from illegal violence and to a fair and orderly trial regardless of the nature of the crime he is suspected of having committed. No good American can condone mob violence or the denial of due process of law. While I believe this feeling is shared by practically all Americans, the fact remains that at least six persons in the United States were lynched by mobs during 1946.

As I said above, the bill as it is now printed was drafted prior to my introducing it on March 22, 1945, and I realize that since that time suggestions have been made concerning legislation of this type which may quite properly belong in the bill.

It is for this reason that I am willing to adopt any constructive features which may be developed during the hearings, to the end that the bill as reported will be as effective as possible to prevent the crime of lynching.

Right here, Mr. Chairman, I might say that my colleague in the House of Representatives, Mr. Clifford Case, who is a very fine American and a very able lawyer, as well as a very much esteemed friend of mine, has introduced a bill, H. R. 3488, which goes further than my bill; and if there are some things in that bill or in anybody else's bill that will make this thing effective and bring it into existence as a law, without becoming emotional and going too far, I certainly am in favor of it.

I want to say to the committee that there is no desire on my part to pass a "phony" bill. I am interested in reaching to the very heart of anything that destroys law and order in the United States.

I would admonish everyone not to put so much in the bill that we will end up with no bill at all and accomplish nothing, as the Nation has done for 28 years.

Senator EASTLAND. The Senator says he does not intend to pass a "phony" bill. What is "phony" about your bill?

Senator HAWKES. I say there is nothing about my bill. In other words, it has been suggested that it does not reach the heart of the thing. Well, what I am saying to you, Senator Eastland, is that I want to reach to the heart of the thing, and I want to cure this condition. I want law and order in the United States.

The high lights of S. 42, as introduced, can be summarized briefly as follows:

Section 1 states that the bill's provisions are:

> enacted in the exercise of the power of Congress to enforce, by appropriate legislation, the provisions of the fourteenth amendment to the Constitution of the United States and for the purpose of better assuring by the several States under said amendment equal protection and due process of law to all persons charged with or suspected or convicted of any offense within their jurisdiction.

In section 2, a mob is defined as—

> any assemblage of three or more persons which exercises or attempts to exercise by physical violence and without authority of law any power of correction or punishment over any * * * person or persons * * *. Any such violence by a mob which results in death or maiming of the victim or victims thereof shall constitute "lynching."

Section 3 provides that whenever a lynching occurs, any officer or employee of a State or its governmental subdivision, who is charged with the duty or possesses the authority to do so but neglects or refuses to make all diligent efforts to protect a person or persons from lynching—

> shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding 5 years, or by both such fine and imprisonment.

Section 4 provides that whenever a lynching occurs and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or its governmental subdivision has neglected or refused to make all diligent efforts to protect against lynching when charged with the duty to do so, the Attorney General of the United States—

> shall cause an investigation to be made to inquire whether there has been any violation of this act.

Section 5 of the bill provides that every governmental subdivision of the State to which the State shall have delegated functions of police shall be civilly liable for any lynching—

> to each person injured, or to his or her next of kin if such injury results in death, for a sum not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death.

Senator REVERCOMB. Senator, let me interrupt there. In section 5 the bill states:

> In every such case the culpable governmental subdivision shall be liable to each person injured, or to his or her next of kin if such injury results in death.

However, in section 2, there is the following language:

> Any such violence by a mob which results in the death or maiming of the victim or victims thereof shall constitute "lynching" within the meaning of this act.

The word "maiming" introduces a limitation as to the extent of the injury.

Senator HAWKES. Well, this is injury or death.

Senator REVERCOMB. Do you go further than maiming?

Senator HAWKES. Maiming is certainly injury.

Senator REVERCOMB. Oh, yes.

Senator HAWKES. You are asking whether injury is maiming?

Senator REVERCOMB. I am asking whether a person who is not bodily maimed could be injured by a mob?

Senator FERGUSON. You see, "maiming" has a distinct meaning in the law.

Senator HAWKES. Yes; I understand that. I know what the Senator is talking about. I understand just enough about law to understand that.

Senator REVERCOMB. Do you not think it ought to go further than maiming? Suppose a mob takes a person out and beats him and injures him, but does not maim him bodily.

Senator HAWKES. That is what this is intended to cover. That brings up what I was intending to say in a moment here. I think I will reach that shortly, if you will let me finish my statement. Then I think we can talk over anything that we want to discuss.

What I want to say is that there may be a necessity for changing this, and I am open to any amendments that may be necessary to accomplish the purpose.

Senator REVERCOMB. I just want to call to your attention the difference in the two sections.

Senator HAWKES. I appreciate very much my distinguished friend from West Virginia calling that to my attention.

Civil action to enforce such liability may be brought in the United States courts and such action prosecuted by the Attorney General of the United States in the claimant's name or, at his election, by claimant's personal counsel. Any Federal district judge may order a change of venue of any such suit that may be instituted.

In any such action a showing (1) that any peace officer of the defendant governmental subdivision after timely notice of danger of mob violence failed to provide protection for the person subsequently lynched, or (2) that apprehension of danger of mob violence was general within the community where the lynching occurred, or (3) any other circumstance from which a reasonable conclusion could be drawn that the governmental subdivision had failed to use all diligence to prevent the lynching, shall be prima facie evidence of liability.

Section 6 contains the usual separability provision.

On December 5, 1946, President Truman, in an Executive order to a Committee on Civil Rights headed by Charles E. Wilson, president of the General Electric Co., stated:

> The constitutional guaranties of individual liberties and of equal protection under the laws clearly place on the Federal Government the duty to act when State or local authorities abridge or fail to protect these constitutional rights.
>
> Yet in its discharge of the obligations placed on it by the Constitution the Federal Government is hampered by inadequate civil-rights statutes.

Mr. Chairman, at this time I should like to ask permission to read portions of the report of Mr. Wilson's committee which has been published under the title of "To Secure These Rights."

Senator FERGUSON. You may do that.

Senator HAWKES. This is on page 20 at the bottom of the page, under the heading, "The crime of lynching." I shall read from the report. [Reading:]

> In 1946 at least six persons in the United States were lynched by mobs. Three of them had not been charged, either by the police or anyone else, with an offense. Of the three that had been charged, one had been accused of stealing a saddle. (The real thieves were discovered after the lynching.) Another was said to have broken into a house. A third was charged with stabbing a man. All were Negroes. During the same year mobs were prevented from lynching 22 persons, of whom 21 were Negroes, 1 white.
>
> On July 20, 1946, a white farmer, Loy Harrison, posted bond for the release of Roger Malcolm from the jail at Monroe, Ga. Malcolm, a young Negro, had been involved in a fight with his white employer during the course of which the latter had been stabbed. It is reported that there was talk of lynching Malcolm at the time of the incident and while he was in jail. Upon Malcolm's release Harrison started to drive Malcolm, Malcolm's wife, and a Negro overseas veteran, George Dorsey, and his wife out of Monroe. At a bridge along the way a large group of unmasked white men, armed with pistols and shotguns, was waiting. They stopped Harrison's car and removed Malcolm and Dorsey. As they were leading the two men away, Harrison later stated, one of the women called out the name of a member of the mob. Thereupon the lynchers returned and removed the two women from the car. Three volleys of shots were fired as if by a squad of professional executioners. The coroner's report said that at least 60 bullets were found in the scarcely recognizable bodies. Harrison consistently denied that he could identify any of the unmasked murderers. State and Federal grand juries reviewed the evidence in the case, but no person has yet been indicted for the crime.
>
> Later that summer, in Minden, La., a young Negro named John Jones was arrested on suspicion of housebreaking. Another Negro youth, Albert Harris, was arrested at about the same time and beaten in an effort to implicate Jones. He was then released, only to be rearrested after a few days. On August 6, early in the evening, and before there had been any trial of the charges against them, Jones and Harris were released by a deputy sheriff. Waiting in the jail yard was a group of white men. There was evidence that, with the aid of the deputy sheriff, the young men were put into a car They were then driven into the country. Jones was beaten to death. Harris, left for dead, revived and escaped. Five persons, including two deputy sheriffs, were indicted and brought to trial in a Federal court for this crime. All were acquitted.
>
> These are two of the less brutal lynchings of the past years. The victims in these cases were not mutilated or burned.
>
> The record for 1947 is incomplete. There has been one lynching, one case in which the victim escaped, and other instances where mobs have been unable to accomplish their purpose. On February 17, 1947, a Negro youth named Willie Earle, accused of fatally stabbing a taxi driver in the small city of Greenville, S C, was removed from jail by a mob, viciously beaten, and finally shot to death. In an unusual and impressive instance of State prosecution, 31 men were tried for this crime. All were acquitted on the evening of May 21, 1947. Early the next morning, in Jackson, N. C, another Negro youth, Godwin Bush, arrested on a charge of approaching a white woman, was removed from a local jail by a mob, after having been exhibited through the town by the sheriff. Bush succeeded in escaping from his abductors, and, after hiding for 2 days in nearby woods, was able to surrender himself safely into the custody of FBI agents and officers of the State. The committee finds it encouraging to note that the Governor of North Carolina has made vigorous efforts to bring to justice those responsible for this attempted lynching.
>
> While available statistics show that, decade by decade, lynchings have decreased, this committee has found that in the year 1947 lynching remains one of the most serious threats to the civil rights of Americans.

Senator EASTLAND. How many were there in 1947?

Senator HAWKES. Only one, as I just said a moment ago. Only one was lynched, put to death, although several others were beaten.

But might I say this to you, Senator Eastland, in answer to that question: I lived in Chicago for many years, and my company had a plant in East St. Louis. I happened to be down there the day that that outbreak occurred in East St. Louis, which was one of the greatest blots we have on our country, when a mob just simply ran rampant. If this thing is not stopped, nobody can tell what the end result will be.

Senator EASTLAND. What was that incident?

Senator HAWKES. That was a race riot. The homes of hundreds of Negroes were burned, and numbers of them were killed. Some of my dearest friends ministered all night to innocent people who had been mistreated.

Senator EASTLAND. That was in violation of the State law. Were they indicted and tried?

Senator HAWKES. I do not think there was any conviction, if I recall correctly.

Senator EASTLAND. If you could not convict them in a State court, how could you convict them in a Federal court?

Senator HAWKES. I do not know. A State court might not conduct the trial as severely as a Federal court would and ought to.

Senator FERGUSON. I might state that the juries come from different districts in Federal courts than they do in State courts. You have limited territory there that you draw your jury from.

Senator HAWKES. Yes; and my bill gives the right of change of venue. I think that is important. I might even myself become emo-

tional in a district where some crime happened, and lose control of myself. That is what I am talking about; that nobody should contribute to anything that destroys the proper, fair administration of justice.

Senator REVERCOMB. Senator Hawkes, I do not want to interrupt your discourse, but you have mentioned the point of the right of change of venue in the Federal court.

Senator HAWKES. Yes.

Senator REVERCOMB. Later I want to go back to that and discuss it with you, after you finish your statement.

Senator HAWKES. All right, Senator. [Reading:]

It is still possible for a mob to abduct and murder a person in some sections of the country with almost certain assurance of escaping punishment for the crime. The decade from 1936 through 1946 saw at least 43 lynchings. No person received the death penalty, and the majority of the guilty persons were not even prosecuted.

The communities in which lynchings occur tend to condone the crime. Punishment of lynchers is not accepted as the responsibility of State or local governments in these communities. Frequently, State officials participate in the crime, actively or passively. Federal efforts to punish the crime are resisted. Condonation of lynching is indicated by the failure of some local law-enforcement officials to make adequate efforts to break up a mob. It is further shown by failure in most cases to make any real effort to apprehend or try those guilty. If the Federal Government enters a case, local officials sometimes actively resist the Federal investigation. Local citizens often combine to impede the effort to apprehend the criminals by convenient "loss of memory," grand juries refuse to indict; trial juries acquit in the face of overwhelming proof of guilt.

The large number of attempted lynchings high lights, even more than those which have succeeded, the widespread readiness of many communities to resort to mob violence. Thus, for seven of the years from 1937 to 1946, for which statistics are reported, the conservative estimates of the Tuskegee Institute show that 226 persons were rescued from threatened lynching. Over 200 of these were Negroes.

Most rescues from lynchings are made by local officials. There is heartening evidence that an ever-increasing number of these officers have the will and the courage to defend their prisoners against mob action. But this reflects only partial progress toward adequate law enforcement. In some instances lynchers are dissuaded by promises that the desired result will be accomplished legally and the machinery of justice is sometimes sensitive to the demands of such implied bargains. In some communities there is more official zeal to avoid mob violence which will injure the reputation of the community than there is to protect innocent persons.

The devastating consequences of lynchings go far beyond what is shown by counting the victims. When a person is lynched and the lynchers go unpunished, thousands wonder where the evil will appear again and what mischance may produce another victim. And every time lynchers go unpunished, Negroes have learned to expect other forms of violence at the hands of private citizens or public officials. In describing the thwarted efforts of the Department of Justice to identify those responsible for one lynching, J. Edgar Hoover stated to the committee: "The arrogance of most of the white population of that county was unbelievable, and the fear of the Negroes was almost unbelievable."

The almost complete immunity from punishment enjoyed by lynchers is merely a striking form of the broad and general immunity from punishment enjoyed by whites in many communities for less extreme offenses against Negroes. Moreover, lynching is the ultimate threat by which his inferior status is driven home to the Negro. As a terrorist device, it reinforces all the other disabilities placed upon him. The threat of a lynching always hangs over the head of the southern Negro; the knowledge that a misinterpretated word or action can lead to his death is a dreadful burden.

Now, that is all I am going to read.

In addition to the sections that I have read, I recommend to the consideration of this committee the plate contained on page 21 of this report that I have referred to, "To secure these rights," which depicts graphically the history of lynchings in the United States since 1882.

Mr. Chairman, Mr. Wilson's committee recommended the enactment by Congress of an antilynching act. The committee stated that "to be effective such a law must contain four essential elements. First, it should define lynching broadly. Second, the Federal offense ought to cover participation of public officers in a lynching, or failure by them to use proper measures to protect a person accused of a crime against mob violence. * * *

Third, the statute should authorize immediate Federal investigation in lynching cases to discover whether a Federal offense has been committed. Fourth, adequate and flexible penalties ranging up to a $10,000 fine and a 20-year prison term should be provided.

If I may step out of the pages of my prepared statement for just a moment, I should like to say that there are three great subjects that I believe it is vital to have covered by Federal law. I cannot understand why the people of the United States have not observed and accomplished that long ago. One of them is this matter of legislation against lynching. The other is the subject of divorces. The third is the subject of uniform driving and road rules throughout the United States. I think when we have made those steps we will save hundreds and thousands of lives and families, and it is just beyond me to understand why it has not been done.

I believe that S. 42 meets the essential elements recommended by Mr. Wilson's committee. It differs with respect to the degree of the penalties, but this is a matter which your committee, when it has completed its hearings, will be well able to pass judgment on.

In 1940, during the Seventy-sixth Congress, a subcommittee of this committee, the Senate Judiciary Committee, held hearings on H. R. 801, a bill most similar to S. 42.

I call your attention to the fact that the chairman of the Judiciary Committee, Senator Wiley, served as a member of that committee, and Senator Connally and Senator Neely were also members.

During the course of these hearings, William H. Hastie, now Governor of the Virgin Islands and then dean of the Howard University Law School here in Washington, D. C., who I might say is reputed to be a very able Negro lawyer, stated in part:

A wise and distinguished statesman, a long-time member of this committee and a staunch supporter of Federal antilynching legislation, the late Senator Logan, of Kentucky, made the following observation in the Senate a few years ago:

"It appears to me that when a Senator is for a bill he can always find something in the Constitution which will justify its enactment, and therefore he concludes it is constitutional. But if he is against the bill, he can always find something in the Constitution which renders it unconstitutional, and therefore he is against the bill."

So in such a case as the pending bill presents, where men feel strongly that the Federal Government should or that it should not act in an effort to stamp out lynching and the ever imminent danger of lynching, it is very difficult to prevent our thinking about what the Congress can lawfully do from being colored by our idea of what Congress ought to do. As a lawyer I have made an honest effort to dissociate my views upon the desirability of this bill from my consideration of the constitutional power of Congress to enact the measure. I have examined the arguments of the proponents of the bill and the arguments of its opponents; and it is my considered judgment that Congress has power to enact this legislation and that the courts of the United States will declare and sustain its constitutionality.

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That is the end of the statement.

In my mind, speaking for myself, now, there is no question about the constitutionality of this bill, and I am certain that this subcommittee will hear competent witnesses on this point during the course of these hearings.

Mr. Chairman, I consider it unnecessary for me to take up any more time, but I have jotted down a few things I would like to say outside of my prepared paper and the remarks I have made.

I just want to ask if there is any American who wants to see our great way of life continued who thinks that the color of a man's skin should determine crime in the United States? I do not. Since when is guilt determined by emotional ex parte trial, conviction, and execution for the administration of one-sided justice? Think of the number of mistakes that have been made.

I personally remember a Negro who was arrested for a diabolical crime in Texas 40 years ago. I have not had time to look it up, but I remember it very well, because I was down in Texas when it happened. The mob took him out and strung him up and built a fire under him, let him down, tortured him, let him be burned a bit, then pulled him up again, then let him down again, and then fired 165 bullets through his body. Five days after they did that, they found out that another man committed the crime. That was in the United States of America.

That is why I am interested in stopping this thing.

I might say, so that I will not be misunderstood, that nobody is stronger against crimes which usually lead to lynchings than I am; but for the life of me I cannot see why the same kind of a crime committed against my daughter by a white man is any different than one committed by a colored man. That is what I am talking about.

Let us remember that respect for law and order and a fair and even dispensation of justice to all of our citizens and all groups of our citizens are the only foundation upon which individual freedom and God's mandates can be preserved.

That is all I have to say.

Senator FERGUSON. Senator Hawkes, I just wanted to go back to that word "maimed." It has a specific meaning, and I have the dictionary before me. It is very limited. It is:

> To deprive a person of such part of his body as to render him less able in fighting or defending himself than he would have been otherwise.

Then, of course, the crime of mayhem, is, in criminal law:

> The act of unlawfully and violently depriving another of the use of such of his members as may render him less able in fighting either to defend himself or to annoy his adversaries.

So it is very limited and would not cover the ordinary injury.

Senator REVERCOMB. Would the point be covered by saying, "injure" or "bodily injury"?

Senator HAWKES. I think it would. In other words, I want law and order, and I think that is what all of us want.

Senator REVERCOMB. Any bill that we report out, we want to be sound.

Senator HAWKES. You bet we do. And I might say that so far as I am concerned I want ordinary arrest, ordinary handling of people,

ordinary incarceration; and then I want a regular trial, where there are two sides, and both sides have their day in court.

Senator FERGUSON. You want equal justice under law.

Senator HAWKES. I want equal justice under law. That is what I want.

Senator REVERCOMB. Now may we advert to this point of venue? On page 4 of your prepared statement, Senator Hawkes, in the first paragraph, the last sentence of that paragraph, you say:

> Any Federal district judge may order a change of venue of any such suit that may be instituted.

Now, I can readily see the purpose of that. In changing venue it may be necessary, for fair trial, because of local prejudice, and upon proper showing, for change of venue to be had. But I see here that you say:

> Any Federal district judge may order a change of venue of any such suit that may be instituted

What is your idea of change of venue? Where would you change it to?

Senator HAWKES. This is the specific language in the bill, on page 5:

> Any judge of the United States district court for the judicial district wherein any suit is instituted under the provisions of this act may by order direct that such suit be tried in any division of such district as he may designate in such order.

Senator REVERCOMB. That is a civil suit you are referring to there, is it?

Senator HAWKES. Well, it does not say so. It says "any suit."

Senator REVERCOMB. Well, a criminal proceeding is not a suit. My whole point here is to get down to a sound bill, where there will be no questions raised about what is meant.

Senator HAWKES. I think you are very wise. That is what I want to do.

Senator REVERCOMB. You are speaking there of change of venue in civil suits. Do you have any provision in criminal proceedings?

Senator HAWKES. I think the Senator has raised a very, very important point. I think I am thoroughly in accord with what you are talking about, if I understand it.

Senator REVERCOMB. In a criminal case, where there is prosecution for a criminal act, the usual law, the Federal law upon change of venue, would be applied. But you cannot go outside the State in the trial of a criminal case. In other words, we run straight afoul of the Constitution of the United States there. I read you this language in article III, section 2, of the Constitution of the United States:

> The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed;

Now, we do not want to run afoul of that and have the law declared invalid.

Senator FERGUSON. Of course, Senator Revercomb, there was a reason for that. We were up against the proposition when the Nation was formed that some of our citizens had been sent to Britain to be tried.

Senator REVERCOMB. Oh, exactly so. I am not talking about the reason for it.

Senator FERGUSON. There was a reason, for putting it in there.

Senator REVERCOMB. Yes, definitely there was a reason. And we have always held that a man shall be tried, in the old English expression, by a jury "of his vicinage"; of his vicinity.

Senator FERGUSON. Yes; and a jury of his peers. That was the reason for putting that in there about change of venue.

Senator REVERCOMB. Frequently, judges from other circuits are called in. But with respect to juries, if you had change of venue it would have to be, apparently, to some other district within the State.

Senator HAWKES. I think so; on the criminal side, at least. And I think that is an amendment that can be made.

Senator EASTLAND. Where could you have a change of venue from one district to another in the Federal courts?

Senator FERGUSON. I do not say that is true in all the States, but I know that in my own State we have three districts; really four, because the northern peninsula takes another district. But we have one at Grand Rapids and one at Bay City and one at Detroit.

Senator EASTLAND. Do you mean to tell me you could transfer a criminal indictment against a man from one district to another?

Senator FERGUSON. Oh, yes. We do it in the State court right along.

Senator EASTLAND. Of course, you do it in State court from county to county, but do you mean to tell me that you can do that in Federal court?

Senator FERGUSON. I think so, as long as you do not go outside the State.

Senator REVERCOMB. The inhibition of the Constitution is: Within the State boundary. And I think any provision that would keep the trial within the State would meet the Constitution.

Senator FERGUSON. Yes.

Senator REVERCOMB. Most States have more than one district.

Now, there is another method of change of venue, and that is by summoning the jury from outside the immediate jurisdiction, but within the State. That has been held to be valid.

Senator HAWKES. That has been held to be valid; yes.

What I am interested in is a latitude which will permit the administration of justice to be taken out of an emotional condition which interferes with the achieving of justice.

Senator REVERCOMB. If there is prejudice, an inflamed general feeling in the locality, upon a proper showing, is that not met if you get outside of that particular locality? Is there not a solution in having the trial away from the immediate feeling of the surrounding section?

Senator HAWKES. I am certain, Senator, you have raised an important point there; and if we tried to get over that hurdle by doing something that is opposed to the inhibition in the Constitution, we will end up without anything. I am talking about getting over the hurdle and getting outside the State. I do not think you can do it.

Senator REVERCOMB. Right. I wanted to bring the point up.

But it seems to me you can get over the hurdle of immediate local prejudice.

Senator HAWKES. That is what I feel. And I will say to you that I will either draft something on that, or your committee can draft it. I am very glad you raised the point.

Senator EASTLAND. I think you should draft it and submit it.

Senator HAWKES. All right. I will draft it and submit it to the committee.

Is there anything else, Mr. Chairman?

Senator FERGUSON. I cannot think of anything at the present time.

There is some question in your bill as to whether you do not provide for the change of venue just in the case of civil liability.

Senator HAWKES. Mr. Chairman, when I draft this new set of conditions for the bill, I will consider that.

Senator FERGUSON. I wish you would also give consideration to that word "mayhem."

Senator HAWKES. Also the word "mayhem"; yes. I think you have made very good suggestions there.

Mr. Chairman, I want to thank you and the other members of the subcommittee for your very fine help on this matter, in which I am deeply interested, and for permitting me to appear here.

Senator FERGUSON. Thank you for coming, Senator Hawkes. We appreciate your coming in and giving us your opinions on this.

Senator EASTLAND. At this point I want to put into the record a letter dated May 26, 1947, from the Attorney General of the United States, in which he holds this bill to be unconstitutional.

Senator REVERCOMB. Does the letter set forth the reasons?

Senator EASTLAND. Yes.

Senator FERGUSON. May I ask the clerk now how many letters we have received from the Attorney General?

Senator EASTLAND. I believe we have only received one on that bill.

Mr. YOUNG. Only one on S. 42, sir.

Senator FERGUSON. Have you any on any of the other bills? Would you let us have all the letters.

Senator EASTLAND. I have those.

Senator FERGUSON. I would like to have them go in together, so that they could be compared at one place.

Senator REVERCOMB. Mr. Chairman, I wish the clerk would read that letter. I would like to hear it.

Senator FERGUSON. I understand the Attorney General says that one of these bills is constitutional and the other unconstitutional.

Senator REVERCOMB. I would like to hear the reasons.

Senator EASTLAND. I should be glad to read this, Mr. Chairman. [Reading:]

Hon. ALEXANDER WILEY,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for my views relative to a bill (S. 42) to assure to persons within the jurisdiction of every State due process of law and equal protection of the laws, and to prevent the crime of lynching.

The bill would provide that any State official or employee who neglects either to prevent lynching or to prosecute those who participate in lynching shall be guilty of a felony punishable by a fine up to $5,000 or imprisonment not exceeding 5 years, or both. The Attorney General would be directed to cause an investigation of any alleged violation of the measure which is supported by information submitted under oath.

The proposal would provide further that, whenever the police officers of a State subdivision, or citizens when called upon by such officers for assistance, neglect to use all means within their power to prevent a lynching within such governmental subdivision, or to prevent the abduction by a mob of a person who is later lynched, such governmental subdivision would be civilly liable to each person injured thereby, or to his next of kin in the event of death, in an amount

not less than $2,000 nor more than $10,000. United States district courts would have jurisdiction of actions based on such liability, and the case would be prosecuted under the direction of the Attorney General, in the name of the United States for the benefit of the claimant, or by private counsel, as the claimant may elect. The judge of the United States district court for the district in which the suit is instituted would be authorized to direct that the suit be tried in any division of his district.

In any such action prima facie evidence of liability could be established by showing (1) that any peace officer of the defendant governmental subdivision, after timely notice of danger of mob violence, failed to provide protection for the person lynched; or (2) that apprehension of danger of mob violence was general within the community where the abduction or lynching occurred; or (3) any other circumstances from which the trier of fact might reasonably conclude that the governmental subdivision had failed to use the neeessary diligence to protect the person abducted or lynched.

The purposes of the bill insofar as the criminal aspects are concerned would appear to be served in part by existing legislation (title 18, U. S. C.. secs. 51 52, and 54).

Although I am in full accord with the proposal to discourage lynching and to bring to justice all those who participate in the offense. it is suggested that further action in this direction should be held in abeyance pending reports and recommendations of the Committee on Civil Rights which has been appointed by the President to study this and related problems.

Moreover, there would appear to be considerable doubt as to the constitutionality of the provision making a governmental subdivision civilly liable for any lynching occurring within its boundaries. It has been held that the prevention of crime and the enforcement of the criminal law are functions of the State rather than of any subdivision thereof, and while the appointment of police officers is usually delegated to municipal corporations, the officers so appointed are public officers whose duties are defined by law, and they serve the people of the whole State rather than the municipality which appointed them (*Giordano* v. *City of Asbury Park*, 91 Fed. (2d) 455, certiorari denied, 302 U. S. 745; *Los Angeles* v. *Gurdane*, 59 Fed. (2d) 161). The right of an individual to sue a State can come only from consent of the State, and not from the Constitution or laws of the United States (*Palmer* v. *State of Ohio*, 248 U. S. 32).

It is not possible to estimate with any degree of certainty the probable increase in annual expenditures of this Department which would be required for the investigations and prosecutions under both the criminal and civil provisions of the proposed legislation.

Senator REVERCOMB. Senator Eastland, just at that point in the Attorney General's letter, it occurs to me that his principal objection, or the thing that he is aiming at as invalid, is the physical recovery provisions. Certainly he does not mean to say that if the Federal Government declares an act to be criminal the Federal officers cannot prosecute and the Federal courts try for that crime?

Senator EASTLAND. Well, of course, the letter speaks for itself.

Senator REVERCOMB. What is your thought on that?

Senator EASTLAND. That is something that I would rather discuss on the floor. There is no point in discussing that here in the committee.

Senator FERGUSON. But is it not true that all these bills include civil liability of the subdivision of the State, and the other opinion of the Attorney General says that is perfectly legal?

Senator EASTLAND. Well, does he say that?

Senator FERGUSON. What does he say?

Senator EASTLAND. My information is that he did not. I do not know.

Senator REVERCOMB. Did you finish the letter?

Senator EASTLAND. That is all.

Senator FERGUSON. Now I will ask the clerk to read the other letter into the record. That is on the other bill that has the same provision in it, S. 1352.

Would you just read the whole letter into the record, Mr. Young.

Mr. YOUNG. It is addressed to Senator Alexander Wiley, dated August 6, 1947, from the Department of Justice, signed by Douglas W. McGregor, the assistant to the Attorney General.

Senator FERGUSON. The other one is signed also by Douglas McGregor. Both are signed by the same man.

All right. Read this one.

Mr. YOUNG (reading):

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice relative to a bill (S. 1352) to prevent lynching.

Sections 1 and 2 of the bill contain a declaration of policy and findings. Under section 3 it would be declared that the right to be free from lynching is a right that accrues by virtue of United States citizenship as distinguished from State citizenship Section 4 would define the terms "lynch mob" and "lynching." Section 5 would provide that a person would be guilty of a felony who willfully instigates, incites, organizes, aids, abets, or commits a lynching, or who is a member of a lynch mob. The punishment provided is a fine not exceeding $10,000 or imprisonment not exceeding 20 years or both.

Under section 6 of the bill, whenever a lynching occurs, any officer or employee of a State or subdivision thereof who has the authority or duty to prevent lynching, and who has neglected, refused, or willfully failed to make diligent efforts to do so, and any such officer or employee who, having had the custody of the person lynched, shall have neglected, refused, or willfully failed to make diligent efforts to prevent a lynching, and any such officer or employee who neglects, refuses, or willfully fails to make diligent efforts to apprehend or prosecute members of the lynch mob, would be guilty of a felony and punishable by a fine not exceeding $5,000 or imprisonment not exceeding 5 years, or both. Section 7 would require the Attorney General of the United States to make an investigation to determine whether this act has been violated whenever a lynching occurs and information on oath is submitted to the effect that any officer or employee of a State or subdivision thereof has neglected, refused, or failed to perform the duties set forth therein.

Every governmental subdivision of a State to which functions of police have been delegated would be responsible for lynchings, seizures, and abductions of victims within its territorial jurisdiction, under section 8 of the bill. Any such subdivision failing to prevent a lynching, or seizure and abduction followed by lynching, would be made liable to the person lynched or his next of kin in case of death in a sum of not less than $2,000 and not more than $10,000. Subsection 2 of this section would provide that the compensation allowed may be recovered in a civil action in the United States district court for the district in which the defendant subdivision is located. It would also provide that the action shall be prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or by private counsel if the claimant so elects. Subsection 3 of this section would authorize the trial of the case in any place in the district designated by the judge of the district court except within the limits of the defendant subdivision. Section 9 of the bill would make transportation in interstate or foreign commerce of any person unlawfully abducted and held for the purpose of punishment, coercion, or intimidation, a violation of the Federal Kidnaping Act (18 U. S. C. 408), Section 10, is the usual severability clause.

Sections 6, 7, and 8 of the bill would seem to be a valid exercise of the powers of Congress under the fourteenth amendment. These sections are designed to secure the enforcement of the obligation of the States under that amendment to afford all persons the equal protection of the laws and protect against the deprivation of life, liberty, or property without due process of law.

Senator FERGUSON. Did you say section 8 was included in that last?

Mr. YOUNG. Yes, sir; 6, 7, and 8.

Senator FERGUSON. Well, now, in 8 is a similar provision:

Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction. Every such governmental subdivision shall also be responsible for any lynching which follows upon the seizure and abduc-

tion of the victim or victims within its territorial jurisdiction, irrespectve of whether such lynching occurs within its territorial jurisdiction or not.

And it provides for the civil liability in a manner very similar to the other bill.

Senator REVERCOMB. Does it specifically provide for civil recovery?

Senator FERGUSON. Yes; that is provided for in the first paragraph of section 8.

Senator REVERCOMB. The part that refers to an amount of not more than $10,000 and not less than $2,000? Is that the provision?

Senator FERGUSON. Yes.

Senator REVERCOMB. He referred to a civil recovery right in the letter there. I had not heard it before. But is this the provision that provides that there may be civil recovery for not less than $2,000 and not more than $10,000?

Senator FERGUSON. Yes; I will read that.

Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each individual who suffers injury to his or her person or property, or to his or her next of kin if such injury results in death, for a sum of not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death——

Senator REVERCOMB. The Attorney General's opinion holds that valid.

Senator FERGUSON. Yes.

Read again what that says.

Mr. YOUNG (reading):

Sections 6, 7, and 8 of the bill would seem to be a valid exercise of the powers of Congress under the fourteenth amendment. These sections are designed to secure the enforcement of the obligation of the States under that amendment to afford all persons the equal protections of the laws and protect against the deprivation of life, liberty, or property without due process of law.

Senator FERGUSON. All right.

Mr. YOUNG (reading):

Section 9 is based upon the power of Congress over interstate and foreign commerce, and there can be little doubt but that such power is sufficient to enable the Congress to exclude therefrom persons unlawfully seized or abducted.

The validity of section 5 of the bill does not seem to be as clear. This section attempts to make lynching by private individuals a Federal offense. An unbroken line of decisions beginning in the early years of the fourteenth amendment have held that such amendment relates to and is a limitation or prohibition upon State action and not upon acts of private individuals (United States vs. Harris, 106 U. S. 629; United States vs. Hodges, 203 U. S. 1).

Attention is invited to the fact that the President has appointed a Committee on Civil Rights to make a study regarding legislation which may be needed for the better protection of civil rights by the Federal Government. This committee is charged with the duty of submitting reports and recommendations to the President. Pending completion of these studies, the enactment of legislation dealing with this subject would be regarded as premature by this Department.

The Director of the Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

DOUGLAS W. MCGREGOR,
The Assistant to the Attorney General.

Senator FERGUSON. The record might show that the study of the President's commission has now been made and submitted, prior to the opening of these hearings.

Senator Eastland, there is a witness here now?

Senator EASTLAND. Yes; Mr. Barry, Solicitor General of Tennessee.

Senator FERGUSON. Do you desire to testify this morning, Mr. Barry?

STATEMENT OF WILLIAM F. BARRY, SOLICITOR GENERAL OF TENNESSEE, NASHVILE, TENN.

Mr. BARRY. I do, Senator.

Senator EASTLAND. Which bill, Mr. Barry? All three of them?

Mr. BARRY. Yes.

Senator REVERCOMB. Before Mr. Barry proceeds:

There are other bills pending in the House while these three bills are pending before the Senate. I want to call to the attention of the committee that bills H. R. 41, H. R. 57, H. R. 77, H. R. 223, H. R. 278, H. R. 800, H. R. 1709, H. R. 3488, H. R. 3618, H. R. 3850, H. R. 4155, H. R. 4528, and H. R. 4577 are all bills pending over there dealing with this particular subject, and I think they may come before us for consideration.

Senator FERGUSON. Yes. But we were interested now in the Senate bills, S. 42, S. 1352, and S. 1465.

Senator REVERCOMB. I thought the record should indicate that there are other bills that may be considered.

Senator FERGUSON. Oh, yes. In the House.

All right, Mr. Barry.

Mr. BARRY. Mr. Chairman, I have read and examined bills S. 42 and S. 1352. I have not had the privilege of reading or examining the other bills, those just referred to by Senator Revercomb.

I will address my remarks more particularly to the contents of S. 42 and S. 1352.

Senator REVERCOMB. May I interrupt to inquire: Have you considered S. 1465, which is the third bill introduced in the Senate?

Mr. BARRY. I have not. I have not been supplied with a copy of that and did not consider it.

Appreciating the value of this committee's time, I have reduced to writing a short statement, which I would like to present to your committee, and then subject myself to any examination that the committee may deem proper.

With the permission of the chairman, I will proceed along that line.

Senator FERGUSON. You may proceed, Mr. Barry.

Mr. BARRY. My name is William F. Barry and my official position is solicitor general of the State of Tennessee, which position I have held for the past 21 years. My appearance before your committee is at the direction of the Governor of Tennessee, Hon. Jim N. McCord. The statements and expressions hereinafter given represent the views of the Governor and myself both in our official and personal capacity.

At the outset, I should say that the State of Tennessee is unalterably opposed to the enactment of the proposed Federal Antilynching Act, S. 1352. I mean by that statement that the officials of Tennessee and the vast majority of its citizenship are opposed to such an act.

In the first instance, we would point out from a factual standpoint that no lynching has occurred within the State of Tennessee for a number of years and neither the State officials nor the citizenship of the State has ever approved of or condoned violence or lawlessness in any

form. Over a period of 13 years I personally tried 3,000 criminal appeals before the Supreme Court of Tennessee and feel that I am entitled to express an opinion as to whether or not the criminal laws of said State have been fairly and impartially administered and whether or not there has been any discrimination by reason of race, creed, color, or religion.

To illustrate the point I have in mind, under the Federal Census of 1940, approximately 17 percent of our population is colored race. To those who have had any experience in administration of criminal law it will be readily apparent that of this large number of criminal cases appealed to our Supreme Court, many of them involve the most unspeakable crimes recognized under the criminal code and necessarily involve both the white and colored races. With the large number of cases referred to and over a long period of years, all cases were tried in an orderly manner and with every regard for due processes of law.

The second sentence of the fourteenth amendment to the Constitution of the United States provides:

> 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 case of the State of Tennessee the foregoing requirement has been literally and actually complied with according to the best abilities of the legislative, administrative, and judicial branches of our State government, and we do not feel that under a government of delegated authority that there is any reason to make a substantial change in such form of government so as to take over from the sovereign States the administration and enforcement of their criminal statutes.

I would like to further point out that with the large number of actual cases which I have heretofore referred to, that more than 99 percent of such cases the arrests and prosecutions were had through the agencies of local governments, primarily the county government and then followed by the municipal and State governments. In other words, law enforcement generally, to those who are familiar with it, is performed through the agencies of local governments. Any change in such essential functions of government will result in antagonism and probably in a vastly lesser degree of law enforcement.

The earlier decisions of the Supreme Court of the United States clearly recognized the purpose and intent of the fourteenth amendment. That purpose has been adhered to as fully as humanly possible by the officials and enlightened citizenship of every State in the Union. There is no person at this time who can reasonably assert that such evil as is sought to be corrected by this legislation has not already been corrected by the State governments and by their local governments to the extent that the supposed evil is now practically nonexistent. I refer particularly to my own State of Tennessee in making that last statement.

From previous service in the State legislature, I assume that your committee in its consideration of bills of this character are more particularly concerned with existing facts within your several States than you are with constitutional questions which you ordinarily refer to your own staff. Speaking only for the State of Tennessee, the relationship between the races is presently harmonious with the State government furnishing to the colored race equal advantages,

privileges, and assistance in education, public health, and in all other fields conducive to the advancement of both races alike. Neither the laws of the United States nor of the several Sttaes has ever yet proven sufficient to prevent occasional disturbances either between members of different races or now more frequently between members of the same race, and there is no State in the Union immune from such problem.

Speaking from the legal point of view and to officials who are thoroughly experienced in government, I would suggest that any bill which commences with a preamble, or like S. 1532, with "findings and policy," immediately announces the legislative intent to depart from the clear and expressed provisions of the Constitution. The bill in question grants criminal jurisdiction within a sovereign State, should a particular type of criminal offense occur. By the same processes, subsequent legislation, if sufficiently advocated, could encompass each and every offense against the criminal laws of a State.

The proposed act goes even further than that and requires the citizens and taxpayers of a county or governmental unit be penalized in civil damages not only in cases of malfeasance of public officers but in cases of so-called nonfeasance of public officers. Bearing in mind that such offense occur between individuals and that there is no official connection therewith, there is certainly no basis to assess damages against self-respecting citizens and taxpayers who are in no sense parties to any crime.

The above generalizations would have less actual application in the State of Tennessee to the extremely infrequent difficulties between the two races than they would have to the currently prevalent difficulties within the economic field and entirely among members of the white race. It has been our experience over a period of the past 25 years in State service that any friction between the various groups within the State of Tennessee, which has been negligible, and in very rare instances between the two races, can only be improved and corrected by better economic conditions on the whole. The laws of the State presently and for years past have accorded every one equal advantages and protection, and there is no present problem that cannot be corrected by improved economic conditions generally.

We feel that any Federal legislation would not only be antagonistic to a people who have themselves through their sovereign State and local governments complied with the fourteenth amendment to the Federal Constitution, and who are yet sufficiently enlightened to carry out self-government and thereby strengthen our National Government.

We stand ready and willing to submit to your committee any and all facts and figures relative to law enforcement generally with the State of Tennessee and we believe that from such showing your committee cannot possibly find any need or necessity for the proposed legislation.

Senator FERGUSON. Mr. Barry, how do you think economic conditions would correct lynching?

Mr. BARRY. Most of our trouble, Mr. Chairman, has been within poorer groups competing for advantages, largely economic advantages. That brings about clashes between groups within the white race, which we presently have in the State, and also occasional clashes between the two races.

Senator FERGUSON. Yes; but let us take the case where a colored man is not given equal protection of the law and is lynched. Is that because he is poor? Is that your contention? That if he were rich he would not be lynched?

Mr. BARRY. No, sir; I am not making that contention in my statement before your committee, because I have prepared no ground for that. We have poverty in all classes.

Senator FERGUSON. Yes; but you say there is no problem that cannot be corrected by improved economic conditions generally. It is not the economics that cause these lynchings, is it?

Mr. BARRY. In many instances, Mr. Chairman, it is the action of groups within the white race, or probably within the two races, bidding for economic advancement, that sometimes brings about friction.

Senator EASTLAND. It bring about racial animosity, and that animosity causes lynching. That is the way I understood him.

Senator FERGUSON. Do I understand, then, that it is your contention that white people who are in the same economic strata as the colored people are competing with the colored people in such a way that they become antagonized and will lynch the colored people? I have never so understood it.

Mr. BARRY. It brings about a certain degree of antagonism, where two groups are competing for the same economic advantages.

Senator FERGUSON. But when a crime occurs, what has that to do with economics?

Mr. BARRY. That creates prejudice.

Senator EASTLAND. What he says is that the economics of competition causes race hatred. When a crime takes place that race hatred causes lynching.

Senator FERGUSON. But is it not the case that some of the people connected with this lynching are in a different economic group?

Mr. BARRY. I have stated at the outset that we have had no lynchings in our State for a great many years, and so far as I know of my own knowledge I would not be a competent witness on that point.

Senator FERGUSON. What do you say about the constitutionality of these bills?

Senator EASTLAND. I would like to have his views in detail.

Mr. BARRY. If the chairman will permit, I would like to borrow this volume of the Constitution and make one or two observations on that point.

These provisions of the several acts, which provide for civil liability to the next of kin as to anyone killed as a result of lynching, could not be directed against the sovereign State, as I understand the eleventh amendment to the Constitution of the United States. Apparently the bills have been drafted with an effort to bring such actions against local governments.

Senator FERGUSON. Yes; that is true.

Mr. BARRY. Irrespective of whether the taxpayers within those local governments have any connection whatsoever with the crime that might be committed.

I have very grave doubts that any government can get a monetary judgment against a party who is in no sense party to the action, whether it is civil law or a criminal offense.

Senator FERGUSON. But is it not for a neglect of duty or a misfeasance or malfeasance or nonfeasance of a public official named by that State or the subdivision that they want to compensate? In other words, it is very similar to a case where a State truck driven by a State employee hits a person, and it is very similar to the provision for damages in that kind of case, because of the neglect of that truck driver. Now, here is the neglect of duty of a police officer or a sheriff or a magistrate or whatever the case may be. What is the difference?

Mr. BARRY. The difference is this: In the case of damages awarded by reason of an accident of a highway department truck, in most instances the States have not authorized suits against the States. They have provided in most cases a board of claims, where the return is gratuitous, discretionary.

Senator FERGUSON. But the Constitution provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Now, the protection of the law means to see that no person is lynched.

Senator REVERCOMB. May I interpose at that point?

Is this your point: That the Federal Government under the Constitution has no authority to create a civil liability against a State?

Mr. BARRY. That is my point. Yes, sir.

Senator REVERCOMB. Then it gets down to this: Suppose you leave out of a Federal bill all provision for civil recovery; first declare it a crime, a Federal crime, and then make it expressly punishable as to those taking part in it, triable in Federal courts.

That law would be valid, would it not?

Mr. BARRY. That was the next point that I wanted to discuss briefly, under the provisions of the fourteenth amendment. I made passing reference to it in the prepared statement which I submitted.

Senator EASTLAND. Senator Ferguson, before you go into that contention, could you sue a State unless the political subdivision consents to be so sued?

Mr. BARRY. There is no right of suit.

Senator REVERCOMB. There is no action against the State.

Senator FERGUSON. But I was bringing it up as the act of an agent of the State. Now, if the Constitution provided for a liability, then could not the Federal Government provide for that? This says that he shall not be denied equal protection of the law.

Mr. BARRY. Here is the basic flaw, as I see it, in these several bills: We are dealing with the fourteenth amendment, which provides that—

> 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.

All of us are familiar with the background of the fourteenth amendment. That amendment was directed against the States, to prevent them from making or enforcing any law which would contravene the purpose of the fourteenth amendment.

Senator FERGUSON. General, is this protection one which extends to States, to counties, municipalities, and so forth?

Mr. BARRY. No, sir. Under the eleventh amendment, that applies to the sovereign States.

Senator FERGUSON. So that you could have liability against the municipality or the county?

Mr. BARRY. Then you get to the basic proposition as to whether or not, by inference, you can infer liability where no action may exist at all. It may be a case of so-called nonfeasance.

Senator REVERCOMB. In other words, reverse the process. A municipality or a county cannot exercise any power that the State cannot exercise. That is the reverse statement.

Senator FERGUSON. Is there any protection to them?

Senator REVERCOMB. The protection to the State would protect all portions or agencies of it if that position is sound.

Mr. BARRY. One further phase of that has to do with venue, which the committee has been discussing. Under our basic right of trial by jury, it is as important that it be tried with a jury of peers or "in the vicinage"; and I do not know of any case where there has been a change of venue except on application of the defendant or where a jury could not be obtained within the jurisdiction where the offense occurred.

There is a further point there that might be considered: That in the case of Federal courts the jurors are not drawn from the county where an offense might have occurred, but they are drawn from the Federal district wherein that court sits. In other words, you would have no local jury in any instance.

Senator REVERCOMB. Now, going back to your civil liability, if I may revert to that. Of course, anyone who is wronged, anyone who may be lynched, or his personal representatives, could today maintain an action for recovery of damages for injury to his person.

Mr. BARRY. That is right.

Senator REVERCOMB. To get to my point, in which I am very much interested, I want a valid law. I want one that is enforceable. Lay aside the civil recovery; declare it a crime, a national crime. Why can that not validly be done, and why cannot the National Government place that venue and jurisdiction of it within the Federal courts for trial as a crime, with punishment fixed by law?

Mr. BARRY. Aside from the jurisdiction that has been taken by the Federal Government under the common clause in certain specified cases where State lines are involved, I do not recall any instance where the Federal Government had attempted to take the fourteenth amendment, which is a prohibition against the States' doing a criminal act or an illegal act, and apply it in cases where an individual or a group of individuals——

Senator REVERCOMB. Let us get away from any particular amendment. This is law and has been upheld: If a Federal revenue officer is indicted for crime in a State court, it is removable to the Federal court, where he is tried. There is jurisdiction in the Federal Government; and that is done under an act of Congress. There is jurisdiction that is vested specifically in the Federal courts, to try and hear that case.

Mr. BARRY. Of a Federal official.

Senator REVERCOMB. A Federal official.

Mr. BARRY. That is quite true.

Senator REVERCOMB. Now, why cannot that extend to any individual, any citizen? The fact of being an official does not in any sense give him a special classification and entitle him to rights that the ordinary citizen does not have.

Mr. BARRY. I view this particular situation as an instance where the Federal Government has taken jurisdiction in one class of homicide cases.

Senator FERGUSON. It may not be homicide. It may be injury.

Mr. BARRY. Possibly felonious assault or homicide; put it that way. By the same token, if we have misconstrued these constitutional provisions over all of these years, they could take jurisdiction, I would say, in rape, assault with intent to commit murder, robbery, or other cases, because each and every one of them involve the constitutional guaranty.

Senator REVERCOMB. What do you think of this proposition, Mr. Barry. Here is a crime that is generally recognized by every one as a crime. You say the people of Tennessee abhor it. I think the majority of people do in every State. If the States fail in reaching that crime and punishing it, the Federal Government then has the right, has it not, to reach out and use its powers to stop that crime?

Mr. BARRY. I have never found anything in the Constitution which would authorize the Federal Government, except under its delegated powers, such as the commerce clause and other sections of it, where the power is delegated, to usurp the prerogatives of a sovereign State. If it can administer one criminal statute, it can administer all criminal statutes, because each and all of them involve rights guaranteed under the Federal Constitution.

Senator REVERCOMB. Well, we know that both the State and the Federal Government have declared acts to be crimes. One may be punished in either one jurisdiction or the other in cases of that kind.

Mr. BARRY. Take the case of narcotics and liquor and things of that kind. They are under the revenue laws. Take the Automobile Transportation Act, the Mann Act, and various and sundry others. They are under the commerce clause, having to do with crossing State lines.

Senator FERGUSON. Is that not identical with putting this under the fourteenth amendment clause? Instead of it being the commerce clause, it is denying to a person equal protection of the law, or due process of law. Is it not identical with that kind of a case?

Mr. BARRY. I would respectfully make this suggestion: that we are dealing with the fourteenth amendment, which is a prohibition against the States, and under an amendment to the Constitution dealing with prohibition against the States, we are dealing with individual right.

Senator FERGUSON. For instance, a State may deny the right of a person to impair the obligation of contract.

Mr. BARRY. That is under the Federal Constitution.

Senator FERGUSON. That is under the Federal Constitution, too, and it applies to the State.

Mr. BARRY. But in each case you have a constitutional provision which covers that and is directed at that particular thing, within which that actually comes. I am trying to make the distinction between a prohibition against a State and a prohibition against individuals, over whom the State may or may not have control.

Senator FERGUSON. Do you see any distinction between holding the police officer, the sheriff, and the person who actually commits the crime of lynching?

Mr. BARRY. It just occurs to me that as a matter of jurisdiction within the bounds of those States, there is no constitutional authority upon which to base it, except, putting it charitably, by giving a broader interpretation to some of the provisions of the Constitution.

Senator FERGUSON. You say it is just as unconstitutional to try to hold the police officer as it is to hold the individual? You do not see any distinction?

Mr. BARRY. No, sir.

Senator FERGUSON. In this one letter of the Attorney General, he draws a distinction. He says it is doubtful that you can hold the individual, but there is no doubt about holding the police officer criminally liable. You do not see any distinction, as he does?

Mr. BARRY. I don't see any material distinction there; but the distinction might be drawn, of course. When you get down to some of the refinements of constitutional law, you might do that. But I frankly do not see any basic distinction in the case of granting jurisidction within the bounds of a State for an injury committed by one private individual upon another private individual. Of course, you can do it by putting it upon the assumption of nonfeasance, and by circuitous reasoning you might be able to do that.

Senator FERGUSON. Are there any questions?

Senator REVERCOMB. No questions.

Senator EASTLAND. I have none.

Mr. BARRY. I want to apologize to the committee for taking up so much time.

Senator FERGUSON. It has been very enlightening.

Senator REVERCOMB. Mr. Chairman, my committee, Public Works, will meet tomorrow morning, so you may proceed without me.

Senator FERGUSON. This will all be written up, Senator, so you will have access to it.

We will now recess until 10 o'clock tomorrow morning.

(Thereupon, at 11:50 a. m., the committee recessed, to reconvene at 10 a. m. Tuesday, January 20, 1948.)

CRIME OF LYNCHING

TUESDAY, JANUARY 20, 1948

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 10 a. m., pursuant to recess, in room 424, Senate Office Building, Senator Homer Ferguson (chairman of the subcommittee) presiding.

Present: Senators Ferguson and Eastland.

Present also: Senator Morse and Robert Barnes Young, committee staff.

Senator FERGUSON. The committee will be in order.

You may proceed, Senator Morse, with your statement.

STATEMENT OF HON. WAYNE MORSE, A UNITED STATES SENATOR FROM THE STATE OF OREGON

Senator MORSE. Mr. Chairman, I want to express my regrets to the committee because I do not have extra copies of the statement which I am going to read this morning. I have only the original and a carbon copy in the office. Some extra copies can be prepared, however, if needed.

I want to express my appreciation to the committee for the opportunity to testify on behalf of my bill, S. 1352.

I would like to have permission at the close of my testimony, Mr. Chairman, to have published in the record certain communications from various organizations that I have received in support of my bill, if that meets with the pleasure of the committee.

Senator FERGUSON. Yes; those will be inserted at the conclusion of your testimony.

Senator MORSE. Mr. Chairman, I understand that this committee has invited certain witnesses who will furnish it with extensive facts and figures on lynchings in the United States. Therefore, I will not take up the time of the committee by presenting material in that area, but will, instead, confine myself to analyzing the provisions of the bill which I have introduced, S. 1352, and to setting forth the constitutional basis for its provisions.

Before I proceed to do so, however, I should like to make one or two general observations. During the past 50 years approximately 5,000 persons are known to have been lynched in the United States, and I take my figures from a source that is not in dispute as far as the accuracy of the figures is concerned; I take my figures from the reports of the Tuskegee Institute, its reports on the matter of lynching. I would like to have permission to have filed as a part of my testimony, Mr.

Chairman, the lynching record from 1919 to 1945. Also, I would like to have permission to bring it up to date. I have it through 1940, and the only copies I have are the originals, but I can assure the chairman that I shall supply the reporter with duplicates for the record.

Senator FERGUSON. All right; if you will do that, it will be inserted at this point in the record.

Senator MORSE. Yes, sir.

(The lynching record referred to, to be submitted by Senator Morse, is as follows:)

Lynching, whites and Negroes, 1919–40

Year	Whites	Negroes	Total	Year	Whites	Negroes	Total
1919	7	76	83	1931	1	12	13
1920	8	53	61	1932	2	6	8
1921	5	59	64	1933	4	24	28
1922	6	51	57	1934	0	15	15
1923	4	29	33	1935	2	18	20
1924	0	16	16	1936	0	8	8
1925	0	17	17	1937	0	8	8
1926	7	23	30	1938	0	6	6
1927	0	16	16	1939	1	2	3
1928	1	10	11	1940	1	4	5
1929	3	7	10				
1930	1	20	21	Total	53	480	533

Source Negro Year Book 1947, Tuskegee Institute, Alabama, p 307.

Lynchings by States and race, 1882–1946

State	Whites	Negroes	Total	State	Whites	Negroes	Total
Alabama	47	299	346	Nevada	6	0	6
Arizona	29	0	29	New Jersey	0	1	1
Arkansas	59	226	285	New Mexico	33	3	36
California	41	2	43	New York	1	1	2
Colorado	66	2	68	North Carolina	15	84	99
Delaware	0	1	1	North Dakota	13	3	16
Florida	25	256	281	Ohio	10	16	26
Georgia	38	487	525	Oklahoma	82	41	123
Idaho	20	0	20	Oregon	20	1	21
Illinois	14	19	33	Pennsylvania	2	6	8
Indiana	33	14	47	South Carolina	4	155	159
Iowa	17	2	19	South Dakota	27	0	27
Kansas	35	19	54	Tennessee	47	203	250
Kentucky	64	141	205	Texas	143	346	489
Louisiana	56	335	391	Utah	6	2	8
Maryland	2	27	29	Virginia	16	83	99
Michigan	7	1	8	Washington	25	1	26
Minnesota	5	4	9	West Virginia	21	28	49
Mississippi	41	533	574	Wisconsin	6	0	6
Missouri	51	71	122	Wyoming	30	5	35
Montana	82	2	84				
Nebraska	52	5	57	Total	1,291	3,425	4,716

Source: Negro Year Book 1947, Tuskegee Institute, Alabama, p. 306.

Senator MORSE. As I was saying, during the past 50 years approximately 5,000 persons are known to have been lynched in the United States. These men and women had their lives taken from them on the most varied and capricious pretexts. The mobs who inflicted their deaths engaged in violence which sank to every level of brutality. Some of the victims were lynched because of the suspicion that they had committed a crime; others because they held or advocated beliefs unpopular in their communities; and still others were guilty of nothing more grievous than having been born a member of a minority race or nationality. But whatever the cause and whatever the method the lynch mob employed, it was unlawful, immoral, and indefensible.

How much longer can we as a nation countenance these atrocities and still live with ourselves, our conscience, and the world community? I say we should end lynching now—this Eightieth Congress—by enacting into the law the bill my colleague, Senator Wagner, and I have introduced.

I can think of no single act that is more revolting to the forces of decency—and more degrading to the perpetrators themselves—than that of lynching. This terrible lynch sickness has not been confined to the boundaries of any one State. It has flowed and ebbed—ebbed and flowed—through every section of the country and in nearly every State. It has infected the life of the entire Nation.

I now come to an analysis of the provisions of S. 1352.

The first section of my bill is composed of congressional findings which I believe comport with the facts, show the necessity for the subsequent provisions of the bill, and lay a firm constitutional basis for its enactment. Subsection (*a*) of section 1 begins with a recital, which I think no one can challenge, that—

> The duty of each State to refrain from depriving any person of life, liberty, or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws, imposes on all States the obligation to exercise their police powers in a manner which will protect all persons equally without discrimination because of race, creed, color, national origin, ancestry, language, or religion.

The next statement in subsection (*a*) of section 1 is also an indisputable fact. There can be no doubt that a State does deprive a person of life, liberty, or property without due process of law and denies him the equal protection of the laws when the State allows mobs to take that life without any interference from the State.

It is, unfortunately, a fact well recognized by all students of lynching in our country and all too well known in the other nations of the world that members of minority races in the United States, particularly Negroes, can be lynched in large areas of the United States with either the active cooperation of police officers or with no fear that the police will interfere to prevent the lynching and with no fear that the State will later punish the lynchers.

Even the Southern Commission on the Study of Lynching, whose investigations and conclusions are set forth by a Prof. Arthur Raper in his book, The Tragedy of Lynching, published by the University of North Carolina Press in 1933, points out that in the vast majority of the lynchings investigated, the police, if not openly participants in the lynching, at least overlooked or condoned the mob action.

Raper quotes as typical of "a common attitude of police officers", the remark of one sheriff, "do you think I am going to risk my life protecting" a Negro? (Raper, p. 13). Raper also quotes the sheriff of McIntosh County, Ga., where George Grant was short to death in a second-floor cell of the county jail on September 8, 1930, as stating that he was glad the death had occurred. "Except for my oath and bond," he added, "I'd have killed him myself "(Raper, p. 13). The sheriff of Thomas County, Ga., reported with satisfaction how he "saw to it" that the lynchers got the "right man" (Raper, p. 13).

Raper in another publication, Race and Class Pressure, page 275, states that in his study of 100 lynchings since 1929 he estimates that—

> * * * at least one-half of the lynchings are carried out with police officers participating and that, in nine-tenths of the others, the officers either condone or wink at the mob action.

Raper also reports that his study shows that the lynchers usually go unmolested by the courts. Rarely are they even brought before the grand jury, even more rarely does the grand jury indict, still more unusual is a conviction, and, in the rare instances of a conviction, they are usually pardoned (Raper, pp. 16–19, 32–33).

In a more recent study made by Gunnar Myrdal, the distinguished Swedish social scientist, who came to this country at the request of the Carnegie Foundation in order that an unbiased evaluation might be made of race relations in this country, the same general pattern is found to exist (Myrdal, An American Dilemma, p. 562).

In view of this fact, I believe that Congress speaking in reference to lynching may properly find that—

when a State, by the malfeasance or nonfeasance of its officials, permits persons not expressly designated as its agents to punish any person within its jurisdiction for crimes or alleged crimes, without trial or other due process of law, and condones such conduct by participating in or facilitating such conduct or by failing to punish either those of its officials who permit such conduct or those guilty of the conduct, the State effectively deprives the victims of such conduct of life, liberty, or property without due process of law and denies to them the equal protection of the laws.

Senator EASTLAND. Could I ask you a question?

Senator MORSE. Certainly.

Senator EASTLAND. As I understand your bill, if a mob lynched a Negro and they were indicted and tried, and acquitted, did I understand you to say then that the State would be liable to a civil suit?

Senator MORSE. Yes; unless the State or governmental subdivision can show by a preponderance of the evidence that it was diligent in its efforts to protect the victim from lynching. An acquittal would merely mean that the parties on trial did not commit the crime.

Senator EASTLAND. You said "if it did not punish those charged." What I want to know is exactly what you mean.

Senator MORSE. If jurisdiction is taken over the case by the State and they go through the legal procedures available to them under the law, the test of due process has been complied with. But what my bill will provide is that it will give jurisdiction to a Federal court in those cases if it proceeds first to take jurisdiction in the matter.

Senator EASTLAND. All right.

Senator FERGUSON. In other words, it would be both a Federal crime and a State crime?

Senator MORSE. Yes.

Senator EASTLAND. Have you some authorities that decisions of the Supreme Court hold that the fourteenth amendment would give the Federal Government the power to invade the police power of a State and make a Federal crime that which the State has exclusive jurisdiction over?

Senator MORSE. As they used to say in the law school, Senator, I do not have a case directly on the nose.

Senator EASTLAND. I see.

Senator MORSE. But I have worked out here a brief on the constitutional features of this problem which I want to present to the committee, which in my opinion will sustain my bill on constitutional grounds when the issue is directly faced by the Supreme Court.

Senator EASTLAND. Have you that brief now?

Senator MORSE. That is part of the statement that I am about to read.

Senator EASTLAND. That is all right.

Senator MORSE (continuing). Section 1 (a) contains the further finding of Congress that—

lynching constitutes an organized effort not only to punish the person lynched, but also to terrorize the groups, in the community or elsewhere, of which the persons lynched are members by reason of their race, creed, color, national origin, ancestry, language, or religion.

The factual basis for this finding is a matter of common knowledge. Other witnesses before this committee will undoubtedly present evidence in support of it.

The research of the Southern Commission on the Study of Lynching, already referred to, shows that racial antagonism and an effort to keep Negroes from achieving a status of equality, socially or economically, with white persons were the basis of most of the lynchings (Raper, The Tragedy of Lynching, pp. 48–49, 50–51, 56–58, 73–74, 201, 221, 299–300, 317–318, 340).

Senator FERGUSON. Senator Morse, I want to ask you one question. Have there not been, or have there been, cases of lynching, I mean taking the law in the people's own hands, where the question even of race or color or creed or nationality was not involved?

Senator MORSE. Oh, yes; many white people have been lynched.

Senator FERGUSON. That is what I mean. There have been cases, and there are quite a number of cases, where they took it into their own hands. Of course, that will be a crime just the same as if it was for some prejudice reason.

Senator MORSE. That is right.

I want to make clear to the committee that my interest in this bill is not limited to discrimination against the colored.

Senator FERGUSON. I understand that.

Senator MORSE. I am interested in this problem because I think the problem constitutes government by mob rather than government by law.

Senator FERGUSON. Yes. In other words, the law must provide an equal protection to all people.

Senator MORSE. That is right.

Raper found that while usually the white persons in the community claimed that the lynched victim had been guilty of some crime, in certain instances the only causes asserted were such things as seeking employment in a restaurant or bringing a suit against a white man for money owed him (pp. 36–37. Cf. floggings for similar reasons, p. 201). In many of the cases where the white persons accused the lynch victim of a crime, evidence disclosed prior resentments at the economic progress he or other Negroes in the community had been making (pp. 172–173, 270, 285, 340–342, 350–351, 466). Raper lists instances of violence used to drive a Negro out of town when he had opened a pressing establishment (p. 201), to drive out a successful Negro grocer (p. 466), to drive all Negroes from farms in one community (p. 317), from jobs in mines in another community (p. 313), and from all regular employment, even that of janitor or bellboy, in another (p. 340).

Raper concludes:

The Black Belt lynching is something of a business transaction * * *. The whites, there, chiefly of the planter class and consciously dependent upon the Negro for labor, lynch him to conserve traditional landlord-tenant relations (p. 57).

Ray Stannard Baker, in 1908, stated:

A community will rise to mob Negroes or to drive them out of the country * * * because the Negro is becoming educated, acquiring property, and getting out of his place (Following the Color Line, p. 81).

Walter White states:

Lynching is much more an expression of southern fear of Negro progress than of Negro crime (Rope and Faggot, p. 11).

Gunnar Myrdal states:

A lynching is not merely a punishment against an individual but a disciplinary device against the Negro group (An American Dilemma, p. 561).

Section 1 (a) concludes with the finding which necessarily follows from the foregoing, that—

by condoning lynching, the State makes the lynching, punishment without due process of law, or other denial of the equal protection of the laws its own act and gives the color and authority of State law to the acts of those guilty of the lynching, punishment, or other denial.

I believe this statement shows to the whole world why Congress should enact my bill, and also indicates the firm constitutional basis on which it rests. However, before referring to the constitutional law to support the bill, I desire to explain the other sections of the bill and why they are drafted as they are.

Section 2 (b) contains the congressional finding which affords the basis for resting the constitutional ground of the bill on the treaty obligations assumed by the United States under the United Nations Charter. This subsection is reinforced by the findings in subsection (b) of section 1, which recites that—

when persons within a State are deprived by a State or by individuals within a State, with or without condonation by a State or its officials, of equal protection of the laws because of race, color, creed, national origin, ancestry, language, or religion, they are denied, or limited in the exercise of, human rights and fundamental freedoms.

The United States has recognized repeatedly both by court decision and by legislative enactment that racial discrimination is inconsistent with fundamental human rights observed by all civilized nations.

Subsection (c) of section 1 recites that—

the law of nations requires that every person be secure against violence to himself or his property by reason of his race, creed, color, national origin, ancestry, language, or religion.

Section 2 of my bill points out that the succeeding provisions of the proposed legislation are necessary in order to (*a*) enforce the provisions in the fourteenth amendment; (*b*) meet the treaty obligations assumed by the United States under articles 55 and 56 of the United Nations Charter; and (*c*) define and punish offenses against the law of nations.

Section 3 constitutes a congressional declaration that the right to be free of lynching is a right accruing to the citizens of the United States by virtue of such citizenship. This declaration is a definition by Congress of one of the privileges and immunities referred to in the second sentence of section 1 of the fourteenth amendment.

Section 4 of my bill defines lynching. For the purposes of this act, it is proposed that lynching shall consist of violence by two or more persons upon any person or his property which is committed because

the perpetrators have a racial antagonism toward the victim or because the perpetrators desire to take the law into their own hands and punish the victim. This definition would clearly exclude all the usual murder cases.

I have no desire to substitute the Federal Government for the State government in punishing the usual type of violence. There has been no showing that the States have failed to do a reasonably efficient job in protecting the lives and property of their citizens except where the victim is of a minority racial or national group or where a mob desired to punish an accused without waiting for a trial. It is in the latter situations that the States have fallen down on the job. The United States can no longer stand by inactive.

Section 5 provides that any perpetrator of the lynching shall be guilty of a felony and subject to a fine not exceeding $10,000 or imprisonment not exceeding 20 years, or both.

Section 6 of my bill provides that any State officer who fails to make all diligent efforts to prevent a lynching, where under the State law he has a duty to protect all persons and their property from violence, shall be guilty of a felony and shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding 5 years, or both.

Section 7 imposes upon the Attorney General of the United States the duty of investigating any lynching where he is informed on oath that the State has failed to protect the victims or has failed to punish the perpetrators.

Senator EASTLAND. Right there, do you think that the Federal Government can punish a State official for what the Federal Government conceives to be the negligence of that official in enforcing the law of the State?

Senator MORSE. That is my contention, when——

Senator EASTLAND. Have you some authority for that statement?

Senator MORSE. That is my contention, when coupled with it is also a failure on the part of that officer to carry out the guaranties of the Constitution as far as the administration——

Senator EASTLAND. What cases do you have now to sustain that?

Senator MORSE. I am going to base most of my argument on constitutionality on the Screws case, which I shall discuss at length later. But, I want to be very frank with the Senator from Mississippi, I think we are in a realm of constitutional law here, which requires giving to the Constitution an application heretofore not given to a particular set of facts. But I think we also have to agree that the flexibility of our Constitution in new and novel cases has been the secret of its greatness. The fact that it has been an instrument so broad and rich in its meaning that it can be applied to new problems as they arise from decade to decade has made it a great instrument of government by law.

Senator EASTLAND. In other words, the courts change the Constitution, is that what you say?

Senator MORSE. Not at all. I do not thing the courts ever change the Constitution. I think they find its meanings applied to new facts.

Senator FERGUSON. Is this not a fact, that one of the reasons you cannot cite a case in point is that we have never passed an antilynching bill?

Senator MORSE. Of course.

Senator EASTLAND. I think to be perfectly fair and frank, the Senator from Michigan is bound to know that the Supreme Court has passed, in a number of instances, on Congress' power to legislate in that field.

Senator FERGUSON. Not in this field.

Senator EASTLAND. Yes, where a crime was committeed by individuals within a State——

Senator FERGUSON. Not in the lynching field.

Senator EASTLAND. On the right of Congress to implement the fourteenth amendment in this field. I mean that statement literally.

Senator FERGUSON. I cannot agree with you.

Senator EASTLAND. Of course, as I told the Senator, I want to testify, and I will have some cases. But I would like to have the Senator's citation that he mentioned, the case, if you don't mind. I want to get it and read it.

Senator MORSE. 325 U. S. 91.

Senator EASTLAND. What was the title of the case?

Senator MORSE. It was known as *Screws* v. *United States.*

Senator EASTLAND. Thank you.

Senator MORSE. I want to supplement what I have said, Mr. Chairman and Senator Eastland. I am going to be perfectly frank throughout the debate on my bill by pointing out that I think we are dealing here with a problem heretofore not passed upon by the Supreme Court insofar as that Court passing upon a Federal antilynching law is concerned. Clearly until we have such an antilynching law and the Court is given an opportunity to pass upon it, I think this question of constitutional law cannot finally be determined. I am perfectly willing to leave it up to the Court.

Section 8 subjects the county or other governmental subdivisions of the State in which a lynching occurs, where the county has not taken all due measures to prevent it, to civil damages in the sum of not less than $2,000 and not more than $10,000 as monetary compensation for the lynching to the victim or his next of kin.

Section 9 renders perpetrators of a lynching who carry their victim across State lines subject to prosecution under the Lindberg Kidnapping Act.

Section 10 contains the use of the severability clause so that if any provision of the statute should be held unconstitutional the rest of the statute would not be affected thereby.

Section 11 provides that this act may be generally referred to as the Federal Antilynching Act.

Before turning to the constitutional basis for the legislation which I propose, I desire to explain why I urge this committee to report my bill rather than the Hawkes antilynching bill . S. 1352 contains all of the provisions of the Hawkes bill but goes much further and is therefore a more effective bill. The Hawkes bill is essentially the same as the Dyer antilynching bill which was pending before Congress almost continuously during the 1920's and 1930's. At that time it had the earnest support of all forces desiring a Federal antilynching act. However, the pattern of lynchings has changed so materially in recent years that I believe enactment of the Hawkes bill would be largely an idle gesture.

The Hawkes bill punishes only State officials or State subdivisions. Under it individuals who participate in lynchings cannot be punished unless they are police officers. At the time the Dyer bill was drafted and urged upon Congress, almost all lynchings involved the open and notorious participation of local police officers—the county sheriff or constable. In the past 10 years, however, in the majority of lynchings, evidence of active, open participation by police officers has been hard to obtain. No one doubts that the State police machinery is acquiescent in almost every instance in which a lynching is perpetrated. But today the active, open participants usually do not include the police officers. While I, of course, believe every police officer who in any way participates or facilitates a lynching should be liable to just as full an extent as anyone else, I urge this Congress not to enact a bill that reaches only the lynchings by a police officer and leaves unpunished all other lynchers.

Now as to the constitutionality of my bill.

It is my firm conviction that my proposed legislation is entirely constitutional in every respect. I believe that every provision in the bill is fully authorized by the due-process and equal-protection clauses of the fourteenth amendment. I believe that every provision of my bill is independently authorized and supported by the privileges and immunities clauses of the fourteenth amendment. However, since the United States has recently entered into treaty obligations with other nations which require us as a Nation to protect the lives and property of all persons within our jurisdiction against any infringement based on race, color, creed, or national origin, I also desire that Congress explicitly recognize that this bill is in fulfillment of those treaty undertakings.

Furthermore, since World War II has made all peoples of the world aware of the dangers to civilization which arise from racial persecution, our Nation has taken a lead in urging that all nations recognize that it is an offense against the law of nations for any person to be deprived of life or property solely by reason of his race or creed.

Since under our Constitution Congress has a duty to define and punish offenses against the law of nations, I desire that the provisions of the bill be regarded by the people of the United States and the people of the world as a definition and punishment of offenses against the law of nations.

The fourteenth amendment.

The constitutional validity under the fourteenth amendment of section 6, which punishes any State officer who neglects, refuses, or willfully fails to prevent a lynching, and of section 8, which imposes civil damages on any county or any other governmental subdiyision of a State, which fails to make reasonable efforts to prevent a lynching, is clear from the recent decision of the Supreme Court of the United States in *Screws* v. *United States* (325 U. S. 91). In that case the Supreme Court sustained as constitutional section 20 of the Criminal Code when applied to prosecute a State officer who beat to death a prisoner in his custody. There the Supreme Court expressly recognized that each person within the jurisdiction of the United States was guaranteed by the fourteenth amendment a Federal right not to have his life taken away from him in punishment for an alleged crime with-

out being first given a trial in accordance with the laws of the State. The Court stated (325 U. S. 91, 106)—

those who decide to take the law into their own hands and act as prosecutor, jury, judge, and executioner plainly act to deprive a prisoner of a trial which due process of the law guarantees him

It may be asked why we need my proposed bill if section 20 of the Criminal Code already makes it a Federal offense for a State officer to lynch or participate in the lynching of a victim. First, it should be noted that the maximum penalty which may be imposed under section 20 of the Criminal Code is 1 year of imprisonment or a fine of $1,000, or both. This is a shockingly inadequate penalty for such a heinous offense as official participation in lynching.

In 1947 the United States Circuit Court of Appeals for the Fifth Circuit affirmed a conviction under this section of a town marshal who arrested a Negro without warrant assertedly because of drunkenness, and, without taking this prisoner to jail, beat him unconscious and threw him into the Suwanee River, where he drowned. The State of Georgia, where the offense occurred, had not prosecuted. The court expressed itself at length in its opinion as to the inadequacy of a statute which permitted only a maximum sentence of 1 year in prison and a fine of $1,000 for such a "cruel and inexcusable homicide" (*Crews* v. *United States*, 160 F. 2d 746).

Senator EASTLAND. What was that citation?

Senator MORSE. *Crews* v. *United States.*

Senator EASTLAND. That is the same case?

Senator MORSE. No; this is One Hundred and Sixtieth Federal Reports, second series, page 746; this is *Crews* v. *United States.* The other was *Screws* v. *United States.*

Senator EASTLAND. Thank you.

Senator MORSE (continuing). Moreover, it is extremely difficult to obtain convictions under section 20 of the Criminal Code because its peculiar language has been construed by the Supreme Court of the United States to require that the jury find that the defendant have a specific intent to deprive the victim of a federally protected right.

The Department of Justice itself has criticized the limitations of section 20 of the Criminal Code and urged the enactment of more satisfactory legislation to enable it to prosecute in lynch situations. Indeed, I know of no one who maintains that section 20 is adequate legislation to deal with the lynch problem.

While the Screws decision by the Supreme Court of the United States dealt with a sheriff who had himself committed the lynching, the Supreme Court's decision makes it clear that the constitutionality of such a prosecution by the Federal Government would not rest upon the degree of the participation by the State officer. The Supreme Court expressly states that any failure by a State officer to perform his duty under the State law to protect a prisoner in his custody constitutes a violation of the federally protected right of the prisoner not to be deprived of his life without a trial.

I believe the Screws decision by the Supreme Court likewise constitutes an authority for upholding civil damages against the county. The opinion of the Supreme Court makes it clear that Congress has the power to enact legislation not merely punishing criminally the State officer, but also imposing remedial measures on any State agency.

Civil damages against the county or other State subdivisions which neglects its duty and thereby enables a lynching to take place is clearly proper remedial legislation by Congress.

The legislation which I am proposing, of course, punishes not only State officers but also all persons who participate in a lynching. I am firmly convinced that it would be a mockery for Congress to pass a bill which was limited to punishing State officers. In the last few years it has been increasingly difficult to obtain evidence of the open participation of State officers in lynchings. Nevertheless, it is abundantly clear that the private individuals who commit the lynching were certain that their conduct was condoned by the State. During the more than 60 years for which we have data with respect to lynchings, it has been clear that this was not an offense which the States could or would punish. The legislative history of the adoption of the fourteenth amendment and the decisions of the Supreme Court of the United States interpreting it show that in such a situation Congress is authorized to enact corrective and remedial legislation to punish private individuals who, with the acquiescence and consent of the State, take the law into their own hands.

During the committee hearings and debates preceding the enactment of the fourteenth amendment, John A. Bingham, the draftsman of section 1 of the amendment, who was in charge of its course through the House,[1] and Senator Howard, who was in charge of the course of the bill through the Senate,[2] each made it clear that the "enjoyment of life" was one of the rights to be protected by the fourteenth amendment. During the debates Senator Howard pointed out that Judge Bushrod Washington had held in *Corfield* v. *Coryell* (Fed. Cas. No. 3230, 4 Wash. Cir. Ct. 380), that the right to be protected in the "enjoyment of life" was a privilege and immunity guaranteed to all citizens by the Constitution of the United States. Senator Howard made it clear that the first sentence of section 1 of the fourteenth amendment by providing that all persons born or naturalized in the United States are citizens of the United States and of the State wherein they reside became entitled to this privilege as one of the privileges or immunities of citizens of the United States.

Furthermore, in debates on legislation to enforce the fourteenth amendment, both Bingham and Howard, as well as many other Congressmen, repeatedly declared that under the fourteenth amendment Congress was empowered to punish not only State officers but all individuals who violated the protected rights.[3]

They explained that a State was to be deemed to have denied the equal protection of its laws when the inequality resulted from omission as well as when it arose through commission. If a State did not enact laws to punish those who committed acts of discrimination or violence on account of race or color or did not enforce such laws, then Congress had the power and the duty to act and the Federal courts to punish offenders. Thus, not all murder or robbery was to be made a Federal offense, but only those offenses which the State failed

[1] Congressional Globe, 39th Cong., 1st sess., appendix, p. 429; cf Congressional Globe, 39th Cong., 1st sess., pp. 14, 813, 1034, 2542–2543; journal of the Reconstruction Committee, pp. 7, 9, 12, 14; Horace E. Flack, the Adoption of the Fourteenth Amendment (1908), pp. 80, 81.

[2] Congressional Globe, 39th Cong., 1st sess., p. 2765.

[3] Congressional Record, 42d Cong., 1st sess., pp. 83–85, 150–154, 251, 375, 475–477, 504–506.

to punish; and even then only where the failure to punish constituted an unequal treatment based on race, color, or previous condition of servitude.[4]

Legislation enacted by Congress during the decade following the adoption of the fourteenth amendment took the forms the sponsors of the amendment had explained would be authorized by it. One of the enforcement acts, popularly known as the Ku Klux Klan Act[5] consisted of five sections, the first of which made any person who, under color of any law, statute, custom, or regulation of any State, should deprive anyone of any rights, privileges, or immunities secured by the Constitution of the United States, liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress, such proceeding to be prosecuted in the Federal courts.

The second section provided that if two or more persons conspire or combine together to do any act in violation of the above-mentioned rights or privileges, which act, if committed within a place under the sole and exclusive jurisdiction of the United States would, under the laws of the United States, constitute the crime of either murder, manslaughter, mayhem, robbery, assault and battery, perjury, subornation of perjury, criminal obstruction of legal process, or resistance of officers in discharge of official duty, arson, or larceny, and if one or more of the parties to the conspiracy or combination do any act to effect the object therefor, all the parties to the conspiracy or combination shall be deemed guilty of a felony, and on conviction be liable to a penalty of not more than $10,000, or to imprisonment for not more than 10 years, or both, at the discretion of the court; but in case of murder, the penalty to be death. The third section provided that where any portion of people were deprived, by insurrection, domestic violence, or combination, of any of the rights or privileges secured by the bill, and constituted authorities of the State should fail to protect them in these rights, either by inability, neglect, or refusal, and should fail or neglect to apply to the President for aid, such facts were to be deemed a denial by the State of the equal protection of the laws, to which they were entitled under the fourteenth amendment. It was declared to be the duty of the President in such cases to employ the militia or land and naval forces of the United States as he might deem necessary.

During the debates which preceded passage of this act, Mr. Bingham made a speech in which he explained his intent in drafting section 1 of the fourteenth amendment. He stated his belief that the language used not only was intended to but did in fact confer upon Congress powers which it never before had and that under them Congress could enact laws for the protection of citizens both as against the States and individuals in the States. Under the amended Constitution, Congress had the power, he asserted, to provide against the denial of rights by the States, whether the denial was in the form of acts of commission or omission.[6]

Senator EASTLAND. Senator, right there, would you give me the citation where that speech is?

[4] Congressional Globe, 41st Cong., 2d sess., pp. 3611–3613; Congressional Globe, 42d Cong., 1st sess., appendix, pp. 83–85, 317, 334, 429, 459, 475–477.
[5] 17 Stat. 13, April 20, 1871.
[6] Congressional Record, 42d Cong., 1st sess., appendix, pp. 83–85.

Senator MORSE. I think you will find that one in the Congressional Record, Forty-second Congress, first session, appendix, pages 83 to 85.

Senator EASTLAND. Thank you, sir.

You have quoted several other speeches. Would you file with the committee the citations on those?

Senator MORSE. My paper has all the footnotes in it, and it cites back to the body of the speech.

What I have tried to do, Senator, is prepare this paper in the form of a law review article, so that it could be published in a law review if any law review wanted to use it.

Senator EASTLAND. Fine.

Senator MORSE (continuing). Other Members of Congress made similar statements.[7]

The Federal Department of Justice had been in existence less than a year when the Ku Klux Klan Act was enacted.[8] It set out to vigorously enforce this law. Hundreds of persons were indicted and convicted. In June 1871, District Attorney Starbuck reported from North Carolina that the Federal grand jury had returned indictments against 21 different bands of men "going in disguise at night whipping, shooting, and wounding unprotected citizens." In most of the cases, said he:

> the proof shows that these outrages were committed to intimidate the victims to abandonment of their Republican and Union principles.[9]

At the November 1871 term of the Federal circuit court at Columbia, S. C., 420 indictments were found for violation of the enforcement acts. Five persons were tried and found guilty, and 25 pleaded guilty.

> In every case submitted to a jury—

reported the Attorney General proudly—

> the verdict was against the prisoner notwithstanding the best defense which skillful counsel, with effective external aid, could make.[10]

Former Attorney General Homer Cummings tells us that "The Klan was disorganized by the initial success of the prosecution."[11] Such a statement coming from this source is particularly indicative of the effectiveness of Federal intervention to change the pattern in the South, for the same author remarks that the "Ku Klux Klan had always existed, but the organization was known as the patrollers and speak sof wholesale outrages to Negroes" as "no new thing in the South" but "a concomitant of the institution of slavery."[12]

The Civil Rights Act of 1875,[13] likewise shows the intent of those who framed and adopted the fourteenth amendment. It provided that all persons are "entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement," and made it a misdemeanor for any person to violate this right. The debates preceding passage of this act contain further

[7] See Flack, op. cit., pp. 226–249, for a full discussion of the debates on this bill and their significance in interpreting the fourteenth amendment.
[8] Homer Cummings and Carl McFarland, Federal Justice (1937), pp. 230–231.
[9] Quoted in Cummings and McFarland, op. cit., pp. 236–237.
[10] Annual Report of the Attorney General for 1871, p. 6. See Cummings and McFarland, op. cit., pp. 238–239.
[11] Cummings and McFarland, op. cit., p. 237.
[12] Ibid, p. 233.
[13] 18 Stat. 335, March 1, 1875.

elucidation by Members of Congress who participated in the adoption of the fourteenth amendment of their intent.[14]

The Supreme Court of the United States in *The Civil Rights Cases* (109 U. S. 3, 14, 23), when it held unconstitutional the Civil Rights Act of 1875, stated that it would have reached a different result had the law been based upon findings by Congress that the States had failed to provide the rights which Congress undertook to provide in the Civil Rights Act. In that case the Supreme Court expressly recognized that Congress would have the power to enact corrective legislation if the State followed the custom of "allowing persons who have committed certain crimes (horse stealing, for example) to be seized and hung by the posse, commitatus without regular trial" (109 U. S. 3, 23).

Congress now has before it many long years in which the States have been afforded full opportunity to deal with the crime of lynching. Yet today, much as I may regret it, I am convinced that none of the States in which lynchings have occurred within the last 10 years have afforded the victims the equal protection of the laws. Lynchings have occurred in every State of the Union except the New England States. There have been more than 300 lynchings in each of the following States: Texas, Louisiana, Mississippi, Alabama, and Georgia. There have been between 100 and 300 lynchings in each of the following States: Oklahoma, Missouri, Arkansas, Kentucky, Tennessee, South Carolina, and Florida. There have been between 50 and 100 lynchings in each of the following States: Montana, Colorado, Nebraska, Kansas, Virginia, and North Carolina. The States with between 1 and 50 lynchings apiece are Washington, Oregon, Idaho, California, Nevada, Utah, Arizona, Wyoming, New Mexico, North Dakota, South Dakota, Minnesota, Iowa, Wisconsin, Illinois Indiana, Michigan, Ohio, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, and New York. These figures are taken from the records collected and kept by the Tuskegee Institute, Ala. A table of the number of lynchings by State appears in John Gunther's Inside U. S. A. (1947). With this experience before it, Congress is amply justified in enacting my proposed bill as corrective legislation. I have no doubt that the present Supreme Court or any future Supreme Court would uphold its constitutionality in full.

THE TREATY MAKING POWER AND THE POWER TO PUNISH OFFENSES AGAINST THE LAW OF NATIONS

As I have already pointed out in my analysis of the provisions of my bill, section 2 (b) contains a recital that Congress finds the provisions of this act necessary "to promote universal respect and observance of human rights and fundamental freedoms for all" without distinction as to race, language, or religion, in accordance with the treaty obligations assumed by the United States under articles 55 and 56 of the United Nations Charter, and section 2 (c) contains a recital that Congress finds the provision of this act necessary "to define and punish offenses against the law of nations." Similarly, section 1 (b) contains a finding by Congress that "when persons within a State are deprived by a State or by individuals within a State, with or without

[14] See Flack, op. cit., pp. 249–277.

condemnation by a State or its officials, of equal protection of the laws because of race, color, creed, national origin, ancestry, language, or religion, they are denied, or limited in the exercise of, human rights and fundamental freedoms" and section 2 (c) contains a congressional finding that "the law of nations requires that every person be secure against violence to himself or his property by reason of his race, color, creed, national origin, ancestry, language, or religion."

Article VI of the Constitution provides that—

> All treaties made or which shall be made, under the Authority of the United States shall be the supreme law of the land.

And article I, section 8, clause 10, empowers Congress—

> To define and punish * * * offenses against the Law of Nations.

The Supreme Court has recognized that under these two sections Congress has broad powers to legislate as to matters of importance to our international affairs. Thus, in *Missouri* v. *Holland* (252 U. S. 416) Mr. Justice Holmes, speaking for the Court, stated:

> If the treaty is valid there can be no dispute about the validity of the statute under article I, section 8, as a necessary and proper means to execute the powers of the Government (p. 432).
>
> Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States (p. 433).
>
> It is obvious that there may be matters of the sharpest exigency for the national well-being that an Act of Congress could not deal with but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action "a power which must belong to and somewhere reside in every civilized government" is not to be found (p. 433).
>
> No doubt the great body of private relations usually fall within the control of the State, but a treaty may override its power (p. 434).

Under these broad principles, never questioned or narrowed by any subsequent decision of the Supreme Court, we have merely to examine the Charter of the United Nations to find that Congress, by ratifying it as a treaty (91 Congressional Record 8189–8190, 51 Stat. 1031), has raised to the stature of the "supreme law of the land" the obligation of the United States to promote—

> universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language, or religion (art. 55 C).

While the Charter recognizes the sovereignty of the members, it states at the outset:

> All members, in order to insure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations in accordance with the present charter (United Nations Charter, art. 2, par. 2).

Moreover, article 56 pledges all members of the United Nations to take joint and separate action in cooperation with the organization for the achievement of the purpose set out in article 55. Clearly, we have here an adequate constitutional basis, either under the power to implement treaties or the power to define offenses against international law, for a statute protecting all individuals against any violence or threats of violence because of race or religion. Indeed, should Congress fail to take such action, it would have culpably failed to carry out the obligations which this Nation has assumed to the other peoples of the world.

In addition to the decisions of the Supreme Court of the United States defining fundamental human rights to include the right of all

persons not to be deprived of life without due process of law (*Screws* v. *United States*, 325 U. S. 91) and not to suffer loss of life or property on account of race, the provisions of the United Nations Charter have been similarly construed by authorities.[15] For example, the American Law Institute interprets the provisions of article 55 to include the right of every person to protection against mob violence because of race or creed and to be free of punishment except after a proper trial.[16]

Historically no doubt has been entertained as to the supremacy of treaties under the Constitution. Thus Madison, in the Virginia Convention, said that if a treaty does not supersede State rights, as far as they contravene its operation, the treaty would be ineffective.

> To counteract it by the supremacy of the State laws would bring on the Union the just charge of national perfidy, and involve us in war.[17]

More recently, in holding that the public policy of New York against confiscation of private property could not prevent the United States from collecting a debt assigned to it by the Soviet Government in an exchange of diplomatic correspondence, this Court stated:

> Plainly the external powers of the United States are to be exercised without regard to State laws or policies. * * * In respect to all international negotiations and compacts, and in respect of our foreign relations generally, State lines disappear. As to such purposes the State of New York does not exist. Within the field of its powers, whatever the United States rightfully undertakes, it necessarily has warrant to consummate. And when judicial authority is invoked in aid of such consummation, State constitutions, State laws, and State policies are irrelevant to the inquiry and decision.[18]

Early in the history of our foreign relations, treaty obligations of the Federal Government operated to affect the common law and statutory rights of American citizens to inherit property,[19] to rely upon a rule of admiralty law,[20] and to avoid the defense that a debt revived by treaty had been paid to the State which had expropriated it during the Revolution.[21]

The treatment of minority citizens within the border of a sovereign state is the proper subject of international negotiations and is a subject directly affecting international relations. The question arose, in view of the Nazi extermination policy, whether—

> sovereignty goes so far that government can destroy with impunity its own citizens and whether such acts of destruction are domestic affairs or matters of international concern.[22]

That question was resolved by the human rights provisions of the United Nations Charter, and by the subsequent adoption by the United Nations General Assembly of a resolution affirming the principles that genocide is a crime under international law whether committed by private individuals, public officials, or statesmen.[23] This resolution changes fundamentally the responsibility of a sovereign nation toward its citizens.[24] While the Nuremberg trials were confined in scope to acts committed after the commencement of war or in preparation for it, the inclusion of persecution of German nationals in crimes against humanity indicates that the field of international affairs has been broadened to include domestic activity of a nation.

Official spokesmen for the American State Department have expressed concern over the effect racial discrimination in this country has upon our foreign relations and the then Secretary of State Stettinius pledged our Government before the United Nations to fight for human rights at home and abroad.[25]

The interest of the United States in the domestic affairs of the nations with whom we have signed treaties of peace following World War II can be seen from the provisions in the peace treaties with Italy, Bulgaria, Hungary, and Rumania, and particularly with settlement of the Free Territory of Trieste, in all of which we specifically provided for governmental responsibility for a nondiscriminatory practice as to race, sex, language, religion, and ethnic origin.[26]

The Potsdam declaration provided for the abolition of all Nazi laws establishing racial or religious discrimination, "whether legal, administrive, or otherwise."

This growth in international law has established that it is now proper for the executive arm of the United States Government to enter into treaties affecting the treatment of citizens of the United States within its own boundaries. This Congress itself participated in incorporating into international law the obligation of a state to protect all persons within its borders, including that state's own nationals, from discrimination because of race or religion in the enjoyment of fundamental human rights, not only when it ratified the United Nations Charter (91 Congressional Record 8189–8190, 51 Stat. 1031), but also when it ratified the peace treaties with Italy, Rumania, Bulgaria, and Hungary, containing guaranties that those countries would protect racial minorities in their midst from discrimination (93 Congressional Record 6307, 6567, 6573, 6578, 6584).

The Supreme Court of the United States has construed the phrase "law of nations" as used in the constitutional grant to Congress of power to define and punish offenses against the law of nations as an expanding concept. Thus the Court has held that as international law expands and comes to embrace new fields and to condemn new crimes, so the power of Congress to punish the new offenses keeps pace with the growth of international law. See, for example, *United States* v. *Arjoma* (120 U. S. 479 Cf. Ex parte Quirin, 317 U. S. 1, 27–30), *Application of Yamashita* (327 U. S. 1, 7), *Frend* v. *United States* (100 F. 2d 691 (app. D. C.), certiorari denied 306 U. S. 640).

[15] See January 1946 issue of 243 Annals of the American Academy of Political and Social Science, on Essential Human Rights, particularly articles by Edward R. Stettinius, Jr., p. 1, Charles E. Merriam, p. 11.
[16] American Law Institute, 243 Annals of the American Academy of Political and Social Science.
[17] 3 Elliots Debates 515.
[18] *U. S.* v. *Belmont* (301 U. S. 324, 331).
[19] *Hauenstein* v. *Lynham* (100 U. S. 483), *Geoffroy* v. *Riggs* (133 U. S. 258). This doctrine has been strongly reiterated in *Clark* v. *Allen* (67 Sup. Ct. 1431) (advance sheets).
[20] *The Schooner Peggy* (5 U. S. 103).
[21] *Ware* v. *Hylton* (3 Dall. 199).
[22] Raphael Lemkin, Genocide as a Crime Under International Law, American Journal of International Law, vol. 41, No. 1 (January 1947), p. 145.
[23] Resolution of General Assembly of United Nations, December 11, 1946.

[24] Lemkin, op. cit., p. 150.
[25] McDiarmid The Charter and the Promotion of Human Rights, 14 State Department Bull 210 (February 10, 1946); and Stettinius's statement, 13 State Department Bull., 928 (May 1945). See also letter of Acting Secretary of State Dean Acheson to the FEPC, published at length in the Final Report of FEPC, reading in part, "the existence of discrimination against minority groups in this country has an adverse effect upon our relations with other countries"
[26] See description of these provisions in Making the Peace Treaties, 1941–47 (Department of State Publications 2774, European Series 24), 16 State Department Bull. 1077, 1080–1082.

CONCLUSION

I urge this subcommittee to report S. 1352 favorably. I believe it is a simple, clearly drafted, effective bill. The constitutionality of all its provisions rest on a firm foundation. Its enactment by Congress would be a great step forward in at long last securing to our Negro citizens those elementary rights guaranteed them by the fourteenth amendment. It would also assure other nations that this country is sincere when we enter into treaties obligating ourselves and others to respect the rights of minorities.

This Nation is deeply ashamed of its lynch record. Only by enactment of my bill can this shame be erased. We should pledge that never again shall a citizen die the horrible death of lynching because the perpetrators know that they will go unpunished for want of a law making lynching a Federal offense.

Mr. Chairman, as the closing paragraphs of my testimony, I ask permission to have printed the paragraphs of the report of the President's Committee on Civil Rights, beginning with the last paragraph on page 23 of that report and extending to the close of the first paragraph on page 25 thereof.

Senator FERGUSON. That is so ordered.

(The excerpts from the report of the President's Committee on Civil Rights referred to are as follows:)

The communities in which lynchings occur tend to condone the crime. Punishment of lynchers is not accepted as the responsibility of State or local governments in these communities. Frequently State officials participate in the crime, actively or passively. Federal efforts to punish the crime are resisted. Condonation of lynching is indicated by the failure of some local law-enforcement officials to make adequate efforts to break up a mob. It is further shown by failure in most cases to make any real effort to apprehend or try those guilty. If the Federal Government enters a case, local officials sometimes actively resist the Federal investigation. Local citizens often combine to impede the effort to apprehend the criminals by convenient "loss of memory"; grand juries refuse to indict; trial juries acquit in the face of overwhelming proof of guilt.

The large number of attempted lynchings high lights, even more than those which have succeeded, the widespread readiness of many communities to resort to mob violence. Thus, for seven of the years from 1937 to 1946 for which statistics are reported the conservative estimates of the Tuskegee Institute show that 226 persons were rescued from threatened lynching. Over 200 of these were Negroes.

Most rescues from lynchings are made by local officials. There is heartening evidence that an ever-increasing number of these officers have the will and the courage to defend their prisoners against mob action. But this reflects only partial progress toward adequate law enforcement. In some instances lynchers are dissuaded by promises that the desired result will be accomplished "legally" and the machinery of justice is sometimes sensitive to the demands of such implied bargains. In some communities there is more official zeal to avoid mob violence which will injure the reputation of the community than there is to protect innocent persons.

The devastating consequences of lynchings go far beyond what is shown by counting the victims. When a person is lynched and the lynchers go unpunished, thousands wonder where the evil will appear again and what mischance may produce another victim. And every time lynchers go unpunished, Negroes have learned to expect other forms of violence at the hands of private citizens or public officials. In describing the thwarted efforts of the Department of Justice to identify those responsible for one lynching, J. Edgar Hoover stated to the committee: "The arrogance of most of the white population of that county was unbelievable, and the fear of the Negroes was almost unbelievable."

The almost complete immunity from punishment enjoyed by lynchers is merely a striking form of the broad and general immunity from punishment enjoyed by whites in many communities for less extreme offenses against Negroes.

Moreover, lynching is the ultimate threat by which his inferior status is driven home to the Negro. As a terrorist device, it reinforces all the other disabilities placed upon him. The threat of lynching always hangs over the head of the southern Negro; the knowledge that a misinterpreted word or action can lead to his death is a dreadful burden

Senator MORSE. Again, I want to thank the committee for its kind attention.

Senator FERGUSON. I want to ask you one question with regard to the Constitution and the treaties. You say the Constitution is broad enough to allow the law to be passed whether there be a racial or other discrimination, but in the law of treaties there is a distinct provision that it would have to apply to some prejudice; is that correct?

Senator MORSE. I think that is a fair interpretation of the Charter.

Senator FERGUSON. The Constitution is broad enough to cover all cases where they take the law into their own hands?

Senator MORSE. That is right.

Senator FERGUSON. And the treaty-making power goes just to discrimination cases?

Senator MORSE. Yes. I bring in the treaty aspect of this problem, Mr. Chairman, only because I think it provides me with additional support; but I am perfectly willing to rest on the fourteenth amendment itself, in view of the decisions that I have cited and in view of what was clearly contemplated when that amendment was adopted, as the congressional debates to which I referred point out.

Senator FERGUSON. And this bill is broad enough to cover not only cases of prejudice but all cases where they take the law into their own hands?

Senator MORSE. All cases where they take the law into their own hands. That is, my primary interest in the bill is to stop government by mob in America.

Senator FERGUSON. Thank you very much, Senator.

Senator MORSE. Thank you. You have been very kind to hear me through.

I will leave this material, to which I previously referred, to be published as a part of my remarks, and I will bring up to date this lynching record that I heretofore spoke of.

Senator FERGUSON. The material you have submitted will be inserted in the record at this point.

(The material submitted by Senator Morse is as follows:)

[From the Washington Post, July 2, 1947]

ANTILYNCHING LAW FAVORED BY MAJORITY IN SOUTH, NATION,

(By George Gallup, director American Institution of Public Opinion)

PRINCETON, N. J., July 1.—In the wake of the Greenville, S. C., lynching trial, public sentiment throughout the country endorses the idea of a Federal antilynching law, judging by the results of an institute poll.

A majority of the voters polled in the 13 Southern States say they would approve having the Federal Government step in and take action if local authorities fail to deal justly with a lynching.

To measure the general public attitude toward the principle of Federal action, the institute questioned a true cross section of voters in all the 48 States on the following:

At present State governments deal with most crimes committed in their own State. In the case of a lynching, do you think the United States Government

should have the right to step in and deal with the crime if the State government doesn't deal with it justly?

The vote:

	Percent
Yes	69
No	20
No opinion	11

Voters polled in the South showed a smaller vote in favor, as follows:

SOUTHERN VOTERS

	Percent
Yes	56
No	35
No opinion	9

The majority of voters feel that a Federal antilynch statute would serve to discourage lynchings and thus reduce their number. This belief is shown in response to a second question:

Do you think this would reduce the number of lynchings in the United States or would it make little difference?

	Percent
Would reduce	60
Little difference	24
No opinion	16

In the South, however, opinion is more closely divided about the effectiveness of a Federal law in reducing lynching.

SOUTHERN VOTERS

	Percent
Would reduce	48
Little difference	37
No opinion	15

In a companion poll, the institute sounded the reactions of all sections, including the South, to the recent Greenville lynch case, in which a group of 31 defendants accused of lynching a Negro were acquitted.

It was found that three out of every four voters had heard or read of the Greenville affair. When asked their opinion of the outcome of the case, voters in South and in the rest of the country expressed disapproval of the acquittal verdict.

	All voters (percent)	*South only (percent)*
Disapproval of verdict	70	62
Indifferent	3	2
Approve of verdict	12	21
No opinion	15	15

NAVAL AIR STATION,
Miami, Fla., July 9, 1947.

Senator WAYNE MORSE,
Washington, D. C.

DEAR SENATOR: I have noticed in last month's edition of the Pittsburgh Courier that Senator Robert F. Wagner, Democrat, of the State of New York, and yourself introduced in the Senate an antilynch bill providing heavy penalties for persons convicted of mob violence or aiding or abetting such violence.

This gesture on your part has been received and read by the Negro Navy and all veterans of this community with much happiness. We as a group in the uniforms of these United States serving our country personally and sincerely pray that the white southerners that are against it shall not in the future object to the passage of this Federal antilynch bill.

Every Negro serviceman and veteran that has fought side by side with the white veterans of these United States and died on the battfields yet wonder with awe and bewilderment if the majority of the southern white people know the need for the passage of this antilynch bill, or even care of the suffering of our people who also fought and even died for this democracy, too. As this is so often discussed by and among our race, we often wonder if they have forgotten who helped them to win the victory that only they seem to want to enjoy all by themselves

Again we ask ourselves, as well as each other, have they forgotten that there are still Negro survivors from Pearl Harbor, the Southwest Pacific, Italy, and north Africa? Many of them remember Pearl Harbor only because that was our first defeat and entry into World War II. I, too, am a survivor from Pearl Harbor, the Southwest Pacific, and north Africa, as well as the Marshall and Gilbert Isles, but have I forgotten them? No; and I doubt if they have either so soon. No fighting man that took a part in these attacks will ever forget

Need we ask ourselves, Do we remember only Pearl Harbor? We, as Negro servicemen and survivors, remember all of these and many, many more that we helped take a part in. Senator Morse, myself as a serviceman still in the uniform serving my country in peace as well as in war, do urge as well as compliment your efforts regarding the passage of this antilynch bill. Our sincere wishes, as well as our prayers, are with you and Senator Robert Wagner, Democrat, of the State of New York.

Very truly yours,

NELSON A. MITCHELL,
United States Navy.

MIMS, FLA., *June 13, 1947.*

FLORIDA DELEGATION,
United States Congress, Washington, D. C.

DEAR SIRS: Again we must remind you of the urgent need of a strong Federal law against lynching and mob violence. The recent acquittal of self-contessed lynchers in Greenville, S. C., affords additional proof that the States themselves are unable to cope with this great evil.

Our own State is no exception. No doubt you still remember the several lynchings that have blotted Florida's record during the past few months: (1) Cellos Harrison at Marianna in 1943. (2) Willie James Howard near Live Oak in 1944, (3) Jesse James Payne near Madison in 1945, and (4) Sam McFadden at Branford in 1945. These are the recorded lynchings. There have been rumors and strong evidence of others For example, on January 7, 1946, Leroy Bradwell, a Negro veteran of Midway, Fla., mysteriously disappeared while in the custody of Sheriff Edwards and Deputy Maple, of Gadsden County. Three witnesses have testified that these two officers carried Leroy from his mother's home about 11:30 that night, and the boy has not been seen or heard of since. Affidavits to this effect were submitted to Governor Caldwell, but no action has been taken.

In only one of these cases (Sam McFadden) has anyone been arrested or convicted. Even in this case the Suwannee County grand jury refused to return an indictment, and Federal authorities could move only under a weak civil-rights statute Thus, a man gets off with only a year in jail and a fine of $1,000 for committing first-degree murder. In the other cases mentioned above the officers were not even suspended for their failure to protect the helpless prisoners entrusted to their care.

We cannot afford to wait until the several States get "trained" or "educated" to the point where they can take effective action in such cases. Human life is too valuable for more experimenting of this kind. The Federal Government must be empowered to take the necessary action for the protection of its citizens. We need a Federal law with teeth. We therefore urge you to work for the passage of the Wagner-Morse-Case bill during this session of Congress.

Respectfully yours,

HARRY T. MOORE,
Executive Secretary, Florida State Conference, NAACP; Progressive Voters' League of Florida, Inc.

FLORIDA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Mims, Fla., March 19, 1946.

FLORIDA DELEGATION, UNITED STATES CONGRESS,
Washington, D. C.

DEAR SIRS: In our letter to you last June we called your attention to the urgency of favorable action on antilynching legislation now pending in Congress. The need of a strong Federal law against lynching is more evident now than ever before. This is particularly true of our own State, which seemed to hold a monopoly on lynchings during 1945. No longer can we hide behind the old theory of States' rights. State authorities in the South have failed utterly to take effective action against lynchers.

Let us consider Florida's lynch record during the past 2½ years. One night in July 1943 the jailer at Marianna obligingly opened his doors to four masked men, and Cellès Harrison was taken out and lynched The State supreme court had practically acquitted Harrison of the charge against him. We appealed to Governor Holland; but no action was taken, except the usual investigation. The jailer was not even suspended for his carelessness. On the first Sunday in January, 1944, a 15-year old Negro boy was taken from his mother by three white men and drowned in the Suwannee River. The father was forced to witness the lynching of his own son The grand jury refused to return an indictment, although the parents identified two of the lynchers. On October 10, 1945, Jesse James Payne was taken from the unguarded jail at Madison and lynched Governor Caldwell publicly admits that the "stupidity and ineptitude" of Sheriff Davis were responsible for this lynching, yet he refuses to suspend the sheriff.

For your information we are inclosing copies of affidavits and correspondence relative to the lynchings mentioned above. These facts speak for themselves. Human lives are being needlessly sacrificed, and the powers that be are reluctant to punish those who are responsible for same. If Negro citizens of Florida, and of the South, are to enjoy the full protection of the law, lynching must be made a Federal crime.

Negro citizens anxiously await positive action on this measure. The stand that you take now will largely determine the way they will vote in the coming primaries.

Respectfully yours,

HARRY T. MOORE,
President, Florida State Conference, NAACP.

LEAGUE FOR INDUSTRIAL DEMOCRACY, INC.,
New York, N. Y., December 15, 1947.

Senator WAYNE MORSE,
Senate Building, Washington, D C.

DEAR SENATOR MORSE: Just a word to state that the board of directors of the League for Industrial Democracy, an organization devoted to increasing democracy in our economic, political, and cultural life, has endorsed the principles embodied in the Wagner-Morse-Case bill and wishes to express its belief that the Federal Government should exercise every constitutional prerogative at its disposal to abolish the shameful practice of lynching in these United States.

Sincerely yours,

HARRY W. LAIDLER, *Executive Director.*

FRATERNAL COUNCIL OF NEGRO CHURCHES OF AMERICA,
WASHINGTON BUREAU,
Washington, D. C., December 5, 1947.

Senator HOMER FERGUSON,
Chairman, Senate Judiciary Subcommittee,
Senate Building, Washington, D. C.

MY DEAR SENATOR FERGUSON: I am writing you at this time to let you know that the National Fraternal Council of Negro Churches in America, which comprises 11 denominations and a membership of 7,000,000, stands squarely behind the passage of a Federal antilynching bill at this session of Congress. At our national council meetings in the past we have repeatedly called for passage of Federal legislation to outlaw this crime that too long has smeared the bill of rights in our Constitution.

Today, we urge the passage of the Wagner-Morse bill, S 1352, in the Senate and the Case bill, H R. 3488, in the House. We call upon you as chairman of the Senate Judiciary Committee to hold open hearings on this vital legislation. It is our conviction that this is no longer a question solely of securing justice and freedom for the Negro citizens of our country. It is now a question of respect for the pledged word of America in the Council of the United Nations, to the proposition that all nations and peoples are entitled to life, liberty, and the protection of their civil rights Freedom-loving peoples all over the world are examining our declarations of a firm belief in justice and freedom for all, and finding us wanting in applying these beliefs at home.

That is why I urge you to act decisively to bring Federal antilynching legislation before the Senate through public hearings.

Yours for humanity,

W. H. JERNAGIN, *Director.*

INTERRACIAL FELLOWSHIP OF GREATER NEW YORK,
New York, N. Y., June 9, 1947.

Hon. WAYNE MORSE,
Senate Office Building, Washington, D. C.

SIR: Our board of directors has unanimously voted to ask me to express to you our hearty approval of the Wagner-Morse bill, S. 1352, and our request that you do all in your power to bring about speedy hearings and enactment of this legislation.

Respectfully yours,

RALPH H. ROWSE.

AMERICANS FOR DEMOCRATIC ACTION,
Washington, D. C., December 20, 1947.

Hon. WAYNE MORSE,
United States Senate, Washington, D. C

DEAR SENATOR MORSE: Americans for Democratic Action, at its organizing conference, March 29–30, 1947, adopted the plank on antilynching laws: "We favor the enactment of Federal antipoll-tax and antilynching laws and their effective enforcement"

Accordingly, this organization endorses and supports the Wagner-Morse-Case antilynch bill (S. 1352 and H. R. 3488). It takes the position that better assurance for the protection of citizens from mob violence can be obtained by the prosecution of such acts by the Federal courts, as provided for in this bill, and to this and earnestly and respectfully recommends its favorable consideration by the Senate and the House Judiciary Committees and its enactment by the Congress.

Sincerely yours,

DAVID D. LLOYD,
Director, Research and Legislation.

CONGRESS OF RACIAL EQUALITY (CORE),
New York, N. Y., December 11, 1947.

Senator WAYNE MORSE,
Senate Office Building, Washington, D C.

DEAR SENATOR MORSE: The Congress of Racial Equality feels that one of the most important tasks confronting Congress when it convenes in 1948 is to pass antilynching legislation. We were most happy to note that the President's Committee on Civil Rights recommended the enactment of Federal antilynching legislation. We feel that the provisions of the Wagner-Morse-Case bill are very adequate. At our convention held last June we went on record in favor of S. 1352 and H. R. 3488. The essence of our resolution was as follows:

"That the Congress of Racial Equality lend its full power in support of any and all efforts to secure passage of House bill 3488 and Senate bill 1352, or any other national bills providing antilynching legislation."

We hope that early in 1948 there will be public hearings on this legislation.

Sincerely yours,

GEORGE M. HOUSER.

NATIONAL COUNCIL OF JEWISH WOMEN,
New York, N. Y., December 16, 1947.

The Honorable WAYNE MORSE,
Senate Office Building, Washington, D. C.

SIR: The National Council of Jewish Women believes that the passage of antilynching legislation is essential for the preservation of civil rights in America

We have supported antilynching legislation since 1923 and at our most recent convention held last November we reiterated our support in the following resolution:

"Whereas the mob spirit is a threat to the safety and welfare of society, and lynching, one of its most vicious manifestations, is a denial of orderly procedure in the administration of the laws against crime: Therefore be it

"*Resolved*, That the National Council of Jewish Women work for the abolition of lynching through the strengthening of State and local laws and by the endorsement of such legislation as will permit Federal authority to intervene in any lynching case where the offenders have not been properly prosecuted by local authorities."

Cordially yours,

MRS. JOSEPH M. WELT,
National President.

RESOLUTION OF THE AMERICAN CIVIL LIBERTIES UNION ON THE WAGNER-MORSE-CASE ANTILYNCHING BILL (S. 1352, H. R. 3488)

DECEMBER 1947.

The American Civil Liberties Union has consistently supported all antilynching bills in Congress, in order to secure Federal intervention in all cases of mob violence against Negroes and others. We note with satisfaction the recent report of the President's Committee on Civil Rights, which heartily endorsed Federal antilynching legislation.

We have carefully studied the Wagner-Morse-Case antilynching bill (S. 1352, H. R. 3488), which we find adequate and proper legislation to remedy a great evil. We do not believe that the constitutional objections raised to this exercise of Federal power are valid. The tragic record in many States of indifference, inaction, and, in some cases, of active participation by State officers in mob violence, would leave the National Government derelict in its duty if it did not intervene.

Furthermore, the vulnerability of the United States on racial matters is now apparent in dealing with world issues of racial justice and equality. Enactment of the proposed legislation will in large part answer attacks on the sincerity of our democratic professions.

We therefore urge as "must" legislation the immediate passage of the Wagner-Morse-Case bill.

RESOLUTION

The Workers Defense League has for many years been actively campaigning for enactment of Federal antilynching legislation; and

Whereas the Workers Defense League is pledged to help put into action recommendations made in the report of the President's Committee on Civil Rights; and

Whereas the President's committee recommended enactment of such legislation including the major provisions of the Wagner-Morse-Case bill; be it

Resolved, That the Workers Defense League do all in its power to press for adoption of this much-needed legislation.

RESOLUTION OF THE NATIONAL LAWYERS GUILD URGING CONGRESS SPEEDILY TO ENACT THE WAGNER-MORSE-CASE ANTILYNCHING BILL (S. 1352 AND H. R. 3488)

During the past 50 years more than 5,000 persons have met death in the United States by lynching. In recent years all of the lynch victims have been Negroes. Although every State has laws punishing such conduct as murder, rarely have lynchers even been prosecuted. The few prosecutions have usually resulted in acquittals. So far as we have been able to discover, no lyncher of a Negro has ever been given a sentence commensurate with his offense.

The National Lawyers Guild deems it imperative that the Federal Government immediately enact effective legislation making lynching a Federal crime. We therefore endorse the Wagner-Morse-Case antilynching bill (S. 1352 and H. R. 3488) and urge its speedy enactment by the Eightieth Congress.

December 18, 1947.

DECEMBER 6, 1947.

Hon. WAYNE MORSE,
Senate Office Building, Washington 25, D. C.

DEAR SENATOR MORSE: The National Council of Negro Women, after careful study and examination, has resolved to endorse heartily the Wagner-Morse-Case bill (S. 1352 and H. R. 3488) and is urging the chairman of both committees concerned to hold immediate public hearings with a view to early passage of this legislation.

In endorsing sound antilynch legislation we have taken many factors into consideration, namely:

1. The fact that more than 5,000 persons are known to have lost their lives at the hands of lynch mobs since 1889.

2 The fact that, since World War II, there has been a great increase in the number of lynchings and attempted lynchings. In many cases, the pattern has been to single out Negro veterans for this type of unlawful violence.

3 The fact that all such practices are contrary to standards of human decency and sound democratic government.

4. The fact that such practices are used not only as a means of sadistic torture, but also as a means of deterring members of minority groups from exercising civil and political rights, i. e., the right to vote, the right to seek opportunities for economic advancement, the right to seek membership in labor unions, etc.

5. And finally, and perhaps most important in these troubled times, the fact that our moral leadership in the world today is challenged by apparent unwillingness to try to work toward perfecting our democratic principles here at home. Substantial evidence of the effect of discrepancies between our pronouncements and their implementation is contained in a letter recently written by Ernest A. Goss, legal adviser to the Secretary of State, who asserted that "the United States has been embarrased in the conduct of foreign relations by acts of discrimination taking place in this country."

Yours very truly,

MARY MCLEOD BETHUNE.
Founder-President.

AMERICAN FEDERATION OF TEACHERS.
New York 30, N. Y., January 11, 1948.

Mr. LESLIE PERRY.
Washington Bureau NAACP.
Washington, D. C.

DEAR MR. PERRY: The 1947 convention of the American Federation of Teachers, at its 1947 convention in Boston, as it has in previous conventions, endorsed an antilynching bill.

The enclosed report of the committee on democratic human relations indicates our recommendations which were adopted by the convention.

I have sent a copy to Senator Ferguson and to Representative Michener.

While this is not in the form of a resolution it indicates without any doubt the stand of the federation.

Fraternally yours,

LAYLE LANE.

Senator FERGUSON. Congresman Keating, we are glad to have you here with us this morning.

Representative KEATING. I am grateful for the opportunity of appearing here, Senator.

Senator FERGUSON. I am sorry that the other members of the committee are not present at this time. Senator Revercomb advised us

yesterday that he couldn't be here this morning on account of another committee meeting, and Senator Eastland, who was here earlier, will not be able to return, but will read the record, as will Senator Revercomb.

So you might proceed in your own way, Congressman.

Representative Keating.

STATEMENT OF HON. KENNETH B. KEATING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Representative KEATING. Mr. Chairman, may I ask that at the beginning of my testimony there be inserted H. R. 4528, a bill which I have introduced in the House which, in general, is similar to S. 1352, but which has some minor differences and one rather important difference?

Senator FERGUSON. Your bill will be inserted in the record at this point.

Representative KEATING. Thank you.

(H. R. 4528 is as follows:)

[H R 4528, 80th Cong, 1st sess.]

A BILL To provide for the application and enforcement of provisions of the fourteenth amendment to the Constitution of the United States and article 55 of the Charter of the United Nations and to assure the protection of citizens of the United States and other persons within the several States from mob violence and lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The Congress hereby makes the following findings:

(a) The duty of each State to refrain from depriving any person of life, liberty, or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws, imposes on all States the obligation to exercise their police powers in a manner which will protect al persons equally without discrimination because of race, creed, color, national origin, ancestry, language, or religion. A State deprives a person of life, liberty, or property without due process of law and denies him the equal protection of the laws when the State's inaction has the effect of a discriminatory withholding of protection

When a State, by the malfeasance or nonfeasance of its officials, permits persons not expressly designated as its agents to punish any person within its jurisdiction for crimes or alleged crimes, without trial or other due process of law, and condones such conduct by participating in or facilitating such conduct or by failing to punish either those of its officials who permit such conduct or those guilty of the conduct, the State effectively deprives the victims of such conduct of life, liberty, or property without due process of law and denies to them the equal protection of the laws.

Lynching constitutes an organized effort not only to punish the persons lynched but also to terrorize the groups, in the community or elsewhere, of which the persons lynched are members by reason of their race, creed, color, national origin, ancestry, language, or religion, and thus to deny to all members of such groups, and to prevent them from exercising the rights guaranteed to them by the Constitution and laws of the United States. By condoning lynching, the State makes the lynching, punishment without due process of law, or other denial of the equal protection of the laws its own act and gives the color and authority of State law to the acts of those guilty of the lynching, punishment, or other denial.

(b) When persons within a State are deprived by a State or by individuals within a State, with or without condonation by a State or its officials, of equal protection of the laws because of race, color, creed, national origin, ancestry, language, or religion, they are denied, or limited in the exercise of, human rights and fundamental freedoms.

(c) Notwithstanding the provisions of the fourteenth amendment to the Constitution of the United States citizens of the United States and other persons have been denied the equal protection of the laws by reason of mob violence.

(d) This mob violence is in many instances the result of acts of omission on the part of State and local officials.

(e) These omissions on the part of State and local officials are not only contrary to the fourteenth amendment, but also to the law of nations, which requires that every person be secure against violence to himself or his property by reason of his race, creed, color, national origin, ancestry, language, or religion and specifically contrary to article 55 of the Charter of the United Nations which pledges the United States to promote universal respect for, and observance of, human rights and fundamental freedoms.

SEC 2. The Congress finds that the succeeding provisions of this Act are necessary in order to accomplish the following purposes:

(a) To enforce the provisions of article XIV, section 1, of the amendments to the Constitution of the United States.

(b) To promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, language, or religion, in accordance with the treaty obligations assumed by the United States under article 55 and article 56 of the United Nations Charter.

(c) To define and punish offenses against the law of nations.

RIGHT TO BE FREE OF LYNCHING AND LYNCH-MOB VIOLENCE

SEC. 3. It is hereby declared that the right to be free from lynching and lynch-mob violence is a right of citizens of the United States, accruing to them by virtue of such citizenship. Such right is in addition to any similar rights they may have as citizens of any of the several States or as persons within their jurisdiction.

DEFINITIONS

SEC. 4. As used in this Act—

(a) The term "lynch mob" means any assemblage of two or more persons which shall, without authority of law, (1) commit or attempt to commit an act or acts of violence upon the person or property of any citizen or citizens of the United States or other person or persons, or (2) exercise or attempt to exercise, by physical violence against person or property, any power of correction or punishment over any citizen or citizens of the United States or other person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such citizen or citizens, persons or persons, or of imposing a punishment not authorized by law.

(b) The term "lynching" means any act or acts of violence by a lynch mob.

PUNISHMENT FOR LYNCHING

SEC. 5. Any person, whether or not a member of a lynch mob, who willfully instigates, incites, organizes, aids, or abets such a mob committing an act of violence shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $10,000 or by imprisonment not exceeding twenty years, or by both such fine and improsinment.

PUNISHMENT FOR FAILURE TO PREVENT LYNCHING OR APPREHEND OFFENDERS

SEC. 6. Any officer or employee of a State or any governmental subdivision thereof, who, having the authority for or being charged with the duty of protecting a citizen of the United States or other person, shall neglect, refuse, or willfully fail to make all diligent efforts to protect such citizen or person against acts of violence or lynching, and any officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of a lynch mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

SEC. 7. Whenever a lynching shall occur, and an information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who, having the duty and possessing the authority to protect a person or persons from lynching, has neglected, refused, or willfully failed to make all diligent efforts to prevent such lynching or has neglected, refused, or willfully failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of a lynch mob, the Attorney General of the United States shall cause an investigation to be made to determine whether or not there has been a violation of this Act.

COMPENSATION FOR VICTIMS OF LYNCHING

SEC. 8. (1) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction. Every such governmental subdivision shall also be responsible for any lynching which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction, irrespective of whether such lynching occurs within its territorial jurisdiction or not. Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each individual who suffers injury to his or her person or property, or to his or her next of kin if such injury results in death, for a sum of not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided, however*, That the governmental subdivision may prove by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and the citizens thereof, when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further*, That the satisfaction of judgment against one governmental subdivision responsible for a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching.

Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part. Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or, if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such governmental subdivision or, upon proper certification by the Attorney General, the amount of any such judgment shall be paid out of the unappropriated funds in the Treasury of the United States and shall be deducted from any funds otherwise available for payment to the State, wherein the violation occurred, under any grant-in-aid program. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(3) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district which he may designate in such order: *Provided*, That no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

SEC. 9. The crime defined in and punishable under the Act of June 22, 1932 (47 Stat. 326), as amended by the Act of May 18, 1934 (48 Stat. 781, ch. 301), shall include the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, correction, or intimidation.

SEVERABILITY CLAUSE

SEC. 10. The essential purposes of this Act being the safeguarding of rights of citizens of the United States and the furtherance of protection of the lives, persons, and property of such citizens and other persons against unlawful and violent interference with or prevention of the orderly processes of justice, and against possible dereliction of duty in this respect by States, or any governmental subdivision thereof, or any officer or employee of either a State or governmental subdivision thereof, if any particular provision, sentence, or clause, or provisions, sentences, or clauses of this Act or the application thereof to any particular person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or other circumstances, shall not be affected thereby.

SHORT TITLE

SEC. 11. This Act may be cited as the "Federal Antilynching Act."

Representative KEATING. I wasn't here for all of Senator Morse's testimony, but I presume he has gone in some detail into the provisions of his bill.

Senator FERGUSON. Yes; he covered each provision.

Representative KEATING. I would like to just point out, then, one minor and one rather major difference in H. R. 4528.

In the recitals at the beginning I have included a recital which I feel is desirable, although perhaps not essential.

After the recital of facts which states that persons by doing certain things are depriving citizens of equal protection of the law, I have a definite finding in my bill that citizens have, in fact, been denied the equal protection of the laws by reason of mob violence, and that this mob violence is, in many instances, the result of acts of omission on the part of State and local officials, and that these omissions are not only contrary to the fourteenth amendment but also to the law of nations.

Then, on page 8 of Senator Morse's bill, section 8, subsection (2), where the compensation for victims of lynching is dealt with, it is provided in S. 1352 that this liability shall be fixed by a judgment, and if not paid on demand—

payment thereof may be enforced by any process available under the State law.

Now I have a fear that in some States perhaps that may be rendered nugatory by failure on the part of State officials to enforce such a money judgment against a governmental subdivision.

Senator FERGUSON. Well, that is rather a complicated proposition, isn't it, in many States—to collect a judgment against a municipality or a State?

Representative KEATING. It is. It is provided, oftentimes, that one must go through a mandamus proceeding——

Senator FERGUSON. A tax levy.

Representative KEATING. That is right—to compel that; and in some States I think it is relatively easy—a money judgment may be collected in the same way that one against an individual is collected. But in order to guard against that, and to make this definitely enforceable—and it would appear at line 19, page 8, of S. 1352; and is found at the bottom of page 8 of H. R. 4528—the following language, after saying that the judgment may be collected by the usual process:

* * * or, upon proper certification by the Attorney General, the amount of any such judgment shall be paid out of the unappropriated funds in the Treasury of the United States and shall be deducted from any funds otherwise available

for payment to the State, wherein the violation occurred, under any grant-in-aid program.

In other words, I believe that is lawful and it would be, it seems to me, a very effective method of insuring the collection by the injured's next of kin or the injured party, of the amount of any judgment, which might not be otherwise possible by the simple processes of the State courts.

Senator FERGUSON. That is somewhat in the nature of a garnishment or attachment?

Representative KEATING. Well, it is really an offset, you might say.

Senator FERGUSON. That is what I mean. It authorizes the Federal Government to pay it and then deduct it from any money that is due in a grant-in-aid program.

Representative KEATING. That is right.

In all other respects the bills are substantially similar.

Senator FERGUSON. Are there any States where there is no provision in law for the collection of a judgment against the State, and you have to get the consent on every one of them?

Representative KEATING. Well, I think in most States——

Senator FERGUSON. There is some provision; isn't there?

Representative KEATING. In some States there is a provision but it is quite cumbersome. Of course, this may be a subordinate governmental subdivision.

Senator FERGUSON. It may be a municipality or a county.

Representative KEATING. Yes.

Senator FERGUSON. It may be the county sheriff or it may be a municipality or it may be a township or otherwise?

Representative KEATING. That is right.

In many cases it might require the vote of some legislative body to cause payment of that judgment to be made, and the legislative body might just refuse to do it.

Senator FERGUSON. In other words, the levying of a tax by the legislative body, and if they refused to levy it, then it wouldn't be collected?

Representative KEATING. That is my feeling.

Senator FERGUSON. A mandamus lying against them wouldn't necessarily compel them to do it?

Representative KEATING. I am afraid not; and also, even though you might eventually do it, it would be a much more cumbersome practice than it would be simply to let the United States Government pay it and deduct it from what the particular State had coming. The very fact that such a provision was in the bill would seem to me a deterrent against arbitrary action on the part of a local governmental subdivision in refusing to pay a judgment which had been obtained.

Senator FERGUSON. But doesn't the United States make these grants-in-aid to carry out a specific thing that the Federal Government wants carried out, and which sometimes is not necessarily what the State wants carried out?

Representative KEATING. Well, that is true——

Senator FERGUSON. And therefore the money would be taken from the Federal Government's program?

Representative KEATING. Well, it would only be chargeable against a grant-in-aid program. At the present moment, with the Federal Government following some of the practices which they do now, I can't think of any State which doesn't have money coming to it under

a grant-in-aid program, and I think that is likely to continue. These amounts ought not to be large—we would certainly hope they wouldn't be large—but I believe that that is a legal and effective method of insuring the payment of such judgments.

Senator FERGUSON. You think it is impossible and impracticable to provide for a method of levy and collection in the State?

Representative KEATING. I doubt if we have the power to legislate regarding the collection of a judgment in a State.

Senator FERGUSON. That is just what I meant by "impracticable"—it wouldn't be constitutional.

Representative KEATING. I have serious doubt as to our ability to do so.

Senator FERGUSON. In other words, you couldn't provide in any Federal law that you could levy on a city hall. I am just asking these questions because this is one thing that has to be worked out here, and it is a very complicated thing to collect a judgment in some States against the State or a municipality thereof.

Representative KEATING. That is right. I would be very doubtful about the power of the Federal Government to do that, and it would also seem to me to be subject to this objection, that it would be rather cumbersome to try to put that all in the bill, and also different States have different terminology and methods of operating.

Senator FERGUSON. Yes.

Representative KEATING. If the suggestion that I have made is not open to some other objection, it seems to me a rather simple way of insuring the payment of a judgment.

Senator FERGUSON. You have to realize, though, that we are dealing with certain States which are violently opposed to any such law as this.

Representative KEATING. Yes.

Senator FERGUSON. And therefore you can expect the utmost resistance by some of our States in the carrying out of this law if it should pass. Don't you agree with that?

Representative KEATING. I certainly do agree.

Senator FERGUSON. Therefore we have to think it out here and do the best we can with it. If we are going to pass a law it shouldn't be an idle law or one that is not workable.

Representative KEATING. I am definitely sure that the chairman is correct.

Senator FERGUSON. To just give a man or his family a judgment doesn't help much if it can't be collected.

Representative KEATING. Not a bit, and I would be afraid, unless something were added to S. 1352, that that part of it might be rendered nugatory.

Senator FERGUSON. It would be an idle ceremony to just provide for getting the judgment and then not being able to collect it.

Representative KEATING. That is right.

Senator FERGUSON. Of course we, as lawyers, have all had judgments that we never collected, and the clients didn't always just understand why, but there were certain provisions that were impossible to get past in order to make collections.

Representative KEATING. That is right. I have had judgments against governmental subdivisions, and I have represented governmental subdivisions, and I know that the chairman is absolutely right

when he says that there are all kinds of obstacles in the way of actually getting the money in hand after you have got the liability established.

Senator FERGUSON. Sometimes it costs almost as much to collect the judgment as the judgment is worth.

Representative KEATING. That is right. It oftentimes means the bringing of an entirely independent proceeding.

Senator FERGUSON. And mandamus and all that goes with it.

Representative KEATING. That is right.

Senator FERGUSON. Well, I wanted to discuss these questions with you, as I do with other members, because I think we should not be passing laws that will later turn out to be mere idle gestures.

Representative KEATING. I agree, and I am grateful for the interest that the chairman has shown on that point.

Of course, it is true that it can be said to our credit that crimes of violence, such as those to which this bill is directed, seem to be on the wane.

It may be conceded, as is argued so often by the opponents of measures of this kind, that the long-range solution of the problem lies rather in the aroused conscience of our people than in the enactment of punitive measures. Yet the fact does remain that from the year 1889, through 1944, which is the last year for which I have figures available, lynch mobs have caused the death of 5,144 persons in the United States. Many of these unfortunates who suffered the extreme penalty had never been guilty of anything more than a minor misdemeanor or sometimes simply an indiscreet statement or motion.

It is cold comfort to the family of the victim of such an outrage in the year 1947 to say that the situation is improving.

This Congress, it seems to me, should act to put an end to this vicious and indefensible practice. I might say at this point, if I am not out of order, that I am very happy that this body has taken the laboring oar in this legislation. As the chairman knows, there have been such bills which have passed the House before which have not succeeded in the Senate, and it is my sincere hope that your body will act favorably on legislation to end this practice.

Senator FERGUSON. The reason that this hasn't been taken up prior to this time is that we had been asked by the Attorney General in one of his letters to wait until the commission that had been appointed by the President under the chairmanship of Mr. Charles Wilson, had rendered its report, and we have that now and that is the reason we want to go ahead with these hearings; and while there is a great amount of testimony already of record, we did want to bring it up to date, and that is why we are glad that you came over.

Representative KEATING. I thank the Chairman.

Of course it would be extremely presumptuous for me to speak for the leadership or the membership of the House, but I feel that if the Senate acts favorably, my judgment is that favorable action in the House will shortly be forthcoming.

Our Nation, either through choice or by chance, has now assumed a position of world leadership. We have made strides of material progress unparalleled probably in any other era of history, either here or elsewhere.

We shall, however, in my judgment, be faithless to our world responsibility and the great challenge and opportunity which is ours,

if we fail to match this advancement with comparable progress in matters of the spirit.

We righteously and indeed sincerely preach to the world the gospel of the dignity of the individual, and advocate the perpetuation, after strengthening, of fundamental freedoms, which must include freedom from violence and from the fear thereof.

Yet these protestations become as sounding brass and tinkling cymbals when we permit a condition to exist in our own country where, even though infrequently, our citizens are permitted to become the victims of mob violence, usually because they are part of a minority, either in race, creed, color, national origin, or religion.

The speedy enactment of legislation to remedy this situation is necessary not only for our own domestic tranquility but also for the maintenance of our proper position as a leader among the nations.

Now the objection which is most frequently met to such legislation is that it is a matter that should be handled by the individual States, and that a Federal antilynching act is tainted with unconstitutionality.

I have given some study to this legal question and am convinced that if the decisions of the Supreme Court are to be taken at their face value, the Congress not only has the power but the duty to protect citizens of the United States under the guaranties of the fourteenth amendment, from acts of omission on the part of State officials, as well as from acts of commission.

Section 1 of the fourteenth amendment has been dealt with here and it would be superfluous for me to go into it further. I want to hurry along.

Section 5 of that amendment, as the Chairman knows, provides that Congress shall have power to enforce by appropriate legislation the provisions of the article which says that no State shall deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

There are indications that the authors of this amendment intended that Congress should have power to provide against the denial of rights by the States, whether the denial was in the form of acts of omission or acts of commission.

It will be recalled that the background period of this amendment was a stormy era in our history; that after the Civil War a bitter controversy arose in which President Johnson sided with the Southern States in the contention that they were entitled, as a matter of constitutional right, to unconditional recognition and readmission into the Union. Encouraged by the President's support, these States were unfortunately led to assume an attitude of defiance, and to enact harsh laws directed against Negroes.

The prevailing sentiment in the northern States, on the other hand, was that all the fruits of war would be wasted unless guaranties were secured protecting white and Negro alike from arbitrary and oppressive State action in the South.

In the atmosphere of this controversy this proposed amendment was submitted to the States and was passed. That was the picture under which the fourteenth amendment was adopted.

Court construction of the amendment, and of the statutes which sought to implement it, were circumscriptive to the extent that some of

the broader powers which were sought to be conferred upon the Federal Government were never completely or effectively invoked. At times the Supreme Court has enunciated broad, general principles, but nevertheless decided the case on other grounds.

But these broad principles seem to me to be of such a character that they are quite compelling. I refer, for instance, to *United States* v. *Reese* (92 U. S. 214), where the Court said:

> The rights and immunities created by or dependent upon the Constitution of the United States can be protected by Congress. The form and manner of the protection may be such as Congress in the legitimate exercise of its legislative discretion shall provide. These may be varied to meet the necessities of the particular right to be protected.

Then, in *Barbier* v. *Connolly* (113 U. S. 27), the Court said:

> The fourteenth amendment undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoilage of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights.

I won't refer to other cases except to request, if I may be permitted, to send the clerk, for inclusion in the record, just a short statement of other cases dealing with this general subject.

Senator FERGUSON. You may do that and we will include it as part of the record.

(The data referred to, furnished by Representative Keating, is as follows:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C, January 20, 1948.

Hon. HOMER FERGUSON,
United States Senate.

DEAR SENATOR FERGUSON: Pursuant to leave granted, I file herewith a short brief on the question of the constitutionality of antilynching legislation to supplement my testimony before your subcommittee on S. 1352 and H. R. 4528.

I appreciate very much the opportunity which you afforded to present my views to your subcommittee.

Very sincerely yours,

KENNETH B. KEATING.

MEMORANDUM ON S. 1352 AND H. R. 4528

The following are illustrative of some of the broad statements of principles laid down in the cases.

United States v. *Reese* ((1876) 92 U. S. 214, 217): "Rights and immunities created by or dependent upon the Constitution of the United States can be protected by Congress. The form and manner of the protection may be such as Congress, in the legitimate exercise of its legislative discretion, shall provide. These may be varied to meet the necessities of the particular right to be protected."

Civil Rights Cases ((1883) 109 U. S. —): "* * * (the fourteenth amendment) does not authorize Congress to create a code of municipal law for the regulation of private rights: but to provide modes of redress against the operation of State laws, and the action of State officers executive or judicial, when these are subversive of the fundamental rights specified in the amendment" (p. 11).

* * * "and so * * * until * * * some State action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the fourteenth amendment, no legislation of the United States under said amendment, nor any proceeding under such legislation, can be called into activity: for the prohibitions of the amendments are against State laws and acts done under State authority" (p. 13).

"* * * Many wrongs may be obnoxious to the prohibitions of the fourteenth amendment * * * Such for example, would be * * * allowing persons who have committed certain crimes * * * to be seized and hung by the posse comitatus without regular trial * * *" (p. 23).

Barbier v. *Connelly* ((1885) 113 U. S. 27, 31): "The fourteenth amendment * * * undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under the circumstances in the enjoyment of their personal and civil rights * * *"

Ex parte Virginia ((1879) 100 U. S 339, 347): The purpose of the fourteenth amendment "* * * was to secure equal rights to all persons, and, to insure to all persons the enjoyment of such rights (and) power was given to Congress to enforce its provisions by appropriate legislation. Such legislation must act upon persons, not upon the abstract thing denominated a State, but upon persons who are the agents of the State in the denial of the rights which were intended to be secured Such is the act of March 1, 1875 (carrying penalties for exclusion from jury service on account of race, color, or previous condition of servitude), and we think it was fully authorized by the Constitution."

Carter v. *Texas* ((1900) U. S. 442, 447): "Whenever by any action of a State, whether through its legislature, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors, in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the fourteenth amendment of the Constitution * * *."

This statement was repeated in the same terms in *Rogers* v. *Alabama* ((1904), 192 U S. 226, 231), and again in *Martin* v. *Texas* ((1906) 200 U. S. 316, 319). The principle is equally applicable to a similar exclusion of Negroes from service on petit juries (*Strander* v. *West Virginia* (1880), 100 U. S. 303). And although the State statute defining the qualifications of jurors may be fair on its face, the constitutional provision affords protection against action of the State through the administrative officers in effecting the prohibited discrimination (*Neal* v. *Delaware* (103 U. S. 370, 397), *Norris* v. *Alabama* (1935), 294 U. S. 587, 589).

Truax v *Corrigan* ((1921), 257 U S. 312, 332): " * * * The due-process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society (*Hurtado* v. *California*, 110 U S 516, 535). It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for everyone's right of life, liberty, and property, which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law, 'All men are equal before the law,' 'this is a government of laws and not of men,' 'no man is above the law,' are all maxims showing the spirit in which legislatures, executives, and courts are expected to make, execute, and apply laws * * *."

The guaranties of protection provided in the fourteenth amendment extend to all persons within the territorial jurisdiction of the United States without regard to difference of race, of color, or of nationality. (See *Vick* v. *Hopkins* (1886), 118 U. S. 356) They cover the action of the curators of a State university who represent the State in carrying out its educational policy of separating the races in its educational institutions by refusing to admit a Negro as a student in the university law school because of his race. (See *Missouri ex rel Gaines* v. *Canada* (1938), 305 U. S. 377.)

Where the proceedings in a State court, although a trial in form by reason of the use of United States troops, were only in form and the appellants were hurried to conviction under the pressure of a mob without regard for their rights, the trial is without due process of law and absolutely void. (See *Moore* v. *Dempsey* (1923) 261 U. S. 86.)

This antilynching bill affords the Congress a new opportunity for testing and expanding these principles and for discovering at this late date whether or not the fourteenth amendment means what it says and whether or not it grants to Congress the power intended to be granted by its sponsors.

Many will say that there are State and Federal laws which are ample. Perhaps there are but is their enforcement ample?

In this regard attention is invited to the drastic provisions of the act of April 20, 1871 (R S. 5299; U S. C 50:203), which reads:

"Whenever insurrection, domestic violence, unlawful combinations, or conspiracies in any State so obstructs or hinders the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection, named in the

Constitution and secured by the laws for the protection of such rights, privileges, or immunities, and the constituted authorities of such State are unable to protect, or, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States, and in all such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy opposes or obstructs the laws of the United States, or the due execution thereof, or impedes or obstructs the due course of justice under the same, it shall be lawful for the President, and it shall be his duty, to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of such insurrection, domestic violence, or combinations."

It is submitted that there should be in the Statutes at Large some law affording protection and guaranteeing redress without the extreme expedient of calling out the armed forces. Such protection and redress are available in this proposed antilynching bill which places the Federal Government squarely behind the principle that all citizens of the United States shall have the equal and full protection of the laws and that this protection shall cover acts of omission as well as acts of commission by State and local authorities.

Representative KEATING. This antilynching bill, it seems to me, affords Congress a new opportunity—I don't say that the question has ever been squarely decided by the Supreme Court—but this is an opportunity to test and expand these principles and to discover, at what I feel is a late date, whether or not the fourteenth amendment means what it says, and whether or not it grants to Congress the power intended by the history and all of the surrounding circumstances, to have been granted by its sponsors.

We have just fought the costliest war in all our history in order that the forces of right, justice, and humanity might prevail over those of tyranny and oppression. It seems to me that it is high time for us to destroy the vestiges of the concept of this defeated ideology which are exemplified in the lynch mob in our own country, and all that it stands for; and it is for that reason that I feel strongly that antilynching legislation should be adopted by this Congress which, with all due respect, is controlled in both Houses by the party of Abraham Lincoln.

I am grateful for the opportunity of being heard here, and I am most hopeful that the subcommittee will report some bill favorably.

Senator FERGUSON. Thank you, Congressman, for coming over.

Our next witness this morning is Mr. Masaoka. You may proceed.

STATEMENT OF MIKE MASAOKA, NATIONAL LEGISLATIVE DIRECTOR, JAPANESE AMERICAN CITIZENS LEAGUE ANTI-DISCRIMINATION COMMITTEE, WASHINGTON, D. C.

Mr. MASAOKA. Mr. Chairman, my name is Mike Masaoka. I am the national legislative director of the Japanese American Citizens League Anti-Discrimination Committee. Our offices are here in Washington, D. C.

At the outset, however, in order to avoid possible waste of time, I would like to state very emphatically that I don't happen to be an attorney, and therefore I don't feel qualified to pass upon the legal technicalities of this bill. At the same time, however, I would like to say that as an honorably discharged American soldier, who fought overseas with a lot of other Americans of all nationalities, I feel that this kind of antilynching bill implements at home some of the things we thought we were fighting for.

I would also like to say that my presence here today should indicate the fact that although the Negro as a group may have been the principal victims of lynching, nevertheless this matter of mob violence and the equal protection by law is of concern to all minorities—to every American, in fact.

The organization I represent has 56 chapters in 20 States and the District of Columbia. Our membership is open to all American citizens irrespective of race, color, creed, or national origin.

As the only national organization representing the interests of persons of Japanese ancestry in the United States, may I emphasize that we are heartily in accord with the principles expressed in the three bills under discussion this morning, the so-called antilynching measures introduced by Senators Robert F. Wagner and Wayne Morse, William F. Knowland, and Albert W. Hawkes.

May I say at this point, too, that we are interested in the most rigid of these bills, particularly the one introduced by Senators Wagner and Morse, because the more effective a bill of this nature is, the more effective will be its enforcement and it will mean more to the people who are at the present sufferers under our present system.

We believe that the right to personal safety and security, regardless of one's race, color, creed, or place of residence, is among the most fundamental. We believe that no person in these United States can be secure in his person and in his property until and unless every other individual in the land is also secure in his life and in his home.

We persons of Japanese ancestry learned this lesson through bitter experience.

It was not so long ago that we persons of Japanese ancestry read of the lynchings of the Negro in the South with only passing interest—like perhaps so many other Americans—declaring that while such criminal actions were deplorable, there was little connection between what happened in other regions and what could happen to us in California and other Western States.

The war changed all that.

We discovered that when people are aroused by hate, and prejudice, and hysteria, no person or group, however innocent, can be free from violence. Indeed, we are now told that one of the reasons for the evacuation, without trial or hearing, of persons of Japanese ancestry from the west coast in the spring of 1942 was that of "protective custody"; that it was necessary to place us in relocation centers away from the mainstream of American life in order to protect us from possible mob action.

As difficult as this situation was, it was still more difficult to understand what happened late in 1944 and early in 1945.

By that time, over 33,300 American citizens of Japanese ancestry had served in our armed forces, divided almost equally between those of us who fought in the European theater and those who served against the Japanese enemy in the Pacific.

The Four Hundred and Forty-second Regimental Combat Team of Japanese Americans that served in Italy and France has often been called the most decorated unit in American military history for its size and length of service, as well as the one suffering the most casualties. Winner of seven Presidential distinguished unit citations, in addition to several thousand individual combat awards, the Four Hun-

dred and Forty-second is best known for rescuing the lost Texas Battalion of white Americans in the Vosges Mountains of northeastern France in October 1944.

Japanese-American troops in the Pacific are credited by many intelligence officers with saving the lives of millions of American soldiers and billions of American dollars by shortening the war against Japan by at least a year. These Japanese-American GI's were in "double jeopardy" while in the service against Japan; they might be and some were mistaken for the Japanese enemy by their own troops, and if caught by the enemy they would have been forced to suffer far more than the ordinary soldier.

Late in 1944, selected individuals of Japanese ancestry were permitted by the Government to return to their west coast homes from which they had been evacuated 2 years earlier, and on January 1, 1945, the War Department lifted its so-called exclusion ban and reopened the entire Pacific slope to all evacuees.

Though cleared by the Government as loyal persons, many of the returning persons of Japanese ancestry were greeted with violence, arson, and threats of all kinds.

Here are a few instances of what took place in California.

In November 1944 Sgt. Cosma Sakamoto, still wearing the uniform of the United States Army, returned to his home near Loomis. He was fired upon by persons unknown and his home burned down. Sakamoto had a younger brother killed in Italy while fighting with the Four Hundred and Forty-second in Europe and two other brothers fighting in the Pacific. He, himself, was with Merrill's Marauders in Burma where he received several decorations for bravery. Even today, Sakamoto is a victim of malaria.

In January 1945 Wilson Makabe, who lost one leg and permanently injured the other in Italy while with the Four Hundred and Forty-second, returned to Newcastle to find his home burned down. He, himself, was threatened: "If you don't leave town, we'll carry you out."

On January 22, 1945, the packing shed of Sumio Doi of Mount Vernon was partially burned. A search revealed terrorists had planted nine sticks of dynamite near the shed. Doi was also fired upon by night riders when he tried to put out the packingshed fire. The father of two sons who were then overseas in the Army, he saw the four men who were arrested for arson and attempted murder acquitted when their defense attorney told the jury: "This is a white man's country and we've got to keep it that way."

Charles Iwasaki's home in Parlier was fired upon four times when he and his family were in it. Arrested and convicted, Levi Multanen was given a suspended sentence.

K. Marita reported to the Sebastopol police that two men had threatened to kill him if he didn't move from his ranch home. He had to hire guards to protect him and his property.

Shots were fired into the Japanese Presbyterian Church in Salinas.

Even the homes of Japanese-American war veterans in such cities as San Francisco and Los Angeles were not safe from rocks and threats.

As recently as November 12, 1947—last year—two Japanese-American war veterans were beaten up near Winters. A "hung" local jury dismissed the case in December. Six weeks earlier, five Japanese-Americans were hospitalized for wounds received when attacked near Lodi.

In all, over 100 separate cases of arson, intimidation, and shooting have taken place in California alone since persons of Japanese ancestry were allowed to return to their preevacuation homes in 1944.

While no person of Japanese ancestry was the victim of lynching as such, that we know of, nevertheless we submit that we can well appreciate the necessity for adequate police protection and Federal legislation that will curb mob action. Having been the unsuspecting and innocent victims of hysteria and prejudice, we want to do everything in our power to prevent any other people, as individuals or as a group, from being subjected to the terrors and horrors of a mob gone beserk.

We realize that the simple passage of a law in and of itself will not eliminate lynching or lawlessness, or cause local enforcement officials to do their duty in the face of popular prejudice. But we know that if the Federal Government sets up standards of conduct and then prosecutes all violations thereof effectively and efficiently, lynchings and other acts of lawlessness will decrease and possibly eventually disappear.

We know that the shooting of a Japanese-American war veteran, or the firing of his home and property, is not condoned, let alone approved by the great majority of the American people. But we do know that such actions were popular, or at least applauded by certain individuals in certain communities at certain times. We are confident, however, that if those criminals who fired the homes of defenseless men, women, and children, or who shot at these same defenseless persons in cold blood, knew that they would have to answer to Federal authorities for their crimes, they would have been either completely dissuaded or certainly less enthusiastic.

As we view the subject, these so-called antilynching laws are the first step in insuring and assuring all persons in the United States, regardless of their domicile or race, the equal protection of the laws at all times and under all circumstances.

As Americans who know what terrorism is, we endorse the legislation now under consideration as one means of affording all peoples under our flag more adequate protection from physical violence.

From our experiences, too, we know that what happens to any American anywhere in this country also happens to us, and that, unless we destroy these ugly manifestations of barbarism and prejudice, sooner or later we may all be the victims of the very same treatment we once accepted either by our silence or by our inaction.

I would like to thank you, Mr. Chairman, very much for this opportunity.

Senator FERGUSON. You are entirely welcome, and thank you for giving us your views on this important matter.

As I understand it, there are no further witnesses at the present time, Mr. Young?

Mr. YOUNG. That is correct, sir.

Senator FERGUSON. The committee will recess until tomorrow morning at 10 in this room.

(Thereupon, at 11:50 a. m., the committee recessed, to reconvene at 10 a. m., Wednesday, January 21, 1948.)

CRIME OF LYNCHING

WEDNESDAY, JANUARY 21, 1948

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 10:30 a. m., pursuant to recess, in room 424, Senate Office Building, Senator Homer Ferguson (chairman of the subcommittee) presiding.

Present: Senators Ferguson and Eastland.

Present also: Robert Barnes Young committee staff.

Senator FERGUSON. Mr. Houston.

Mr. HOUSTON. Here, sir.

Senator FERGUSON. The committee will come to order. Mr. Charles Houston, chairman of the national legal committee, National Association for the Advancement of Colored People, is the first witness.

You may proceed, Mr. Houston.

STATEMENT OF CHARLES H. HOUSTON, CHAIRMAN, NATIONAL LEGAL COMMITTEE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, WASHINGTON, D. C.

Mr. HOUSTON. If it please the chairman, I appear here as chairman of the national legal committee of the National Association for the Advancement of Colored People to urge the committee to report favorably S. 1352, the Morse-Wagner antilynching bill.

I have examined S. 1465, the Knowland bill, and S. 42, the Hawkes bill, and while both of these bills are undoubtedly constitutional, we do not think that the bills go as far as the Wagner-Morse bill.

On top of that, we think that the bases for the legislation are more clearly stated in the Wagner-Morse bill and that the Wagner-Morse bill more closely conforms to the situation in which lynching now stands in the United States.

The pattern of lynching, in other words, is different from the time when the Hawkes bill and the Knowland bill were really drafted, because these bills are really adaptations of bills which had been before the United States Senate as far back as the 1930's.

My organization actively supported all the bills, but we regard the old type of bill represented by the Hawkes bill and the Knowland bill as entirely inadequate.

In the intervening years the pattern of lynchings has undergone a change. In the majority of the lynchings perpetrated during the last decade, it has been difficult to obtain evidence of active participation by a police officer. In the old lynchings you had more of a

public spectacle, and the lynchings from jail which were so common at the time that the original Dyer bill and the other bills were drafted does not occur to the same extent now.

Maybe an exception, if it were really traced out, would be the lynching in Monroe, Ga., on July 20, 1946, but even in that lynching where the parties were taken out of jail and lynched on the way from jail, the difficulty of proof shows that where you limit the punishment and the corrective force of the legislation to the State officers, you are sometimes up against insuperable odds from the standpoint of proof.

Under the Hawkes bill, unless evidence could be obtained showing that the sheriff or peace officer in some manner was a conniver in the lynching, the Federal Government would continue to be just as helpless to punish such lynchings as it is today.

We don't think that with the very broad base of constitutionality in the Wagner-Morse bill that there would be any reason for passing an adequate bill such as the Hawkes or Knowland bills.

I would like to call the attention of the committee to the report of the President's Committee on Civil Rights which in effect endorses the bill here introduced by Senators Wagner and Morse. Although that report does not by name mention the Wagner-Morse bill, I believe that an examination of the report set over against the bill will show that in effect Senators Wagner and Morse had anticipated the committee by more than 6 months.

For example, the committee recommends that the offense of lynching be defined broadly. That is the report on page 157. Section 4 of the Wagner-Morse bill defines lynching as any violence by two or more persons upon person or property committed because of the victim's race, creed, color, national origin, ancestry, language, or religion, or committed as an attempt to take punishment in their own hands.

In other words, when a group of persons inflicts death, bodily harm or property destruction on a victim because of antagonism to his race or religion or his national origin, or when a group of persons takes the law in their own hands to inflict their own notions of summary punishment, the proposed bill would punish each member of that group as lynchers.

In the second place, the President's committee recommends that to be effective, an antilynching law should make each of the following crimes: "Participation of public officers in a lynching," "failure by them to use proper measures to protect a person accused of crime against mob violence," "the failure or refusal of public officers to make proper efforts to arrest members of lynch mobs and to bring them to justice," "action by private persons taking the law into their own hands to mete out summary judgment upon an accused person," and "action by either public officers or private persons meting out summary judgment and private vengeance upon a person because of his race, color, creed, or religion," or national origin, as it should be in this respect, the report correctly catalogs and approves the offenses covered by sections 4 and 5 of Senator Morse's bill.

In the third place, the President's committee recommends that "the statute should authorize immediate Federal investigation in lynching cases to discover whether a Federal offense has been committed." This is also accomplished by section 7 of Senator Wagner and Senator Morse's bill.

Fourth, the committee recommends the maximum penalty of $10,000 fine and a 20-year prison term. These are the exact figures that are fixed in section 5 of the Wagner-Morse bill.

I think that Senators Wagner and Morse are to be congratulated upon introducing a bill that the President's committee has not been able to improve upon and which it recommends.

It is also to be noted that the President's Committee believes that such a bill would in all of its part be supported by several constitutional bases and that "these are sufficiently strong to justify prompt action by Congress," that statement appearing in the report on page 158.

At other places in its report the President's Committee has copied from the constitutional grounds set forth in the Wagner-Morse bill. The committee endorses resting legislation to protect the civil rights on the fourteenth amendment as recited in section 1 (a) and 2 (a) of the proposed bill and also endorses basing such legislation on the treaty obligations assumed by the United States under articles 55 and 56 of the United Nations Charter.

This also is provided for in section 1 (b) and 2 (b) of the proposed bill.

Similarly, the recitals in the committee's report with respect to the importance of the right not to be lynched and the state of the observance of that right in the United States coincide in all respects with the findings set out in the Wagner-Morse bill. The committee begins its discussion of lynching by stating, page 20:

> Vital to the integrity of the individual and to the stability of a democratic society is the right of each individual to physical freedom, to security against illegal violence, and to fair, orderly legal process. Most Americans enjoy this right, but it is not yet secure for all. Too many of our people still live under the harrowing fear of violence or death at the hands of a mob or of brutal treatment by police officers.

The condonation by States which lynching has generally received is described as follows; I quote from the report, pages 23 and 24:

> While available statistics show that, decade by decade, lynchings have decreased, this committee has found that in the year 1947 lynching remains one of the most serious threats to the civil rights of Americans.

I would like to digress and to emphasize the word "threats," because to create terror in a community or in a minority group it is not necessary always to have a lynching but the very threat of the presence and possibility of lynching as a community pattern of violence or as a community pattern of correction is perfectly ample to keep the minority group or the community in a state of terror and subjection.

So, so long as lynching remains a threat, there is justification for this Federal legislation.

To resume quoting:

> It is still possible for a mob to abduct and murder a person in some sections of the country with almost certain assurance of escaping punishment for the crime. The decade from 1936 through 1946 saw at least 43 lynchings. No person received the death penalty, and the majority of the guilty persons were not even prosecuted.
>
> The communities in which lynchings occur tend to condone the crime. Punishment of lynchers is not accepted as the responsibility of State or local governments in these communities. Frequently, State officials participate in the crime, actively or passively. Federal efforts to punish the crime are resisted. Condonation of lynching is indicating by the failure of some local law-enforcement officials to

make adequate efforts to break up a mob. It is further shown by failure in most cases to make any real effort to apprehend or try those guilty. If the Federal Government enters a case, local officials sometimes actively resist the Federal investigation. Local citizens often combine to impede the effort to apprehend the criminals by convenient "loss of memory"; grand juries refuse to indict; trial juries acquit in the face of overwhelming proof of guilt.

The committee report also contains, page 21, a statistical chart and map showing the number and distribution of lynchings occurring since 1882. From these it appears that in recent years the victims have all been Negroes and that only the New England States have been entirely free of lynchings.

I was here, Mr. Chairman, on Monday, and heard the solicitor general of the State of Tennessee testify there had been no lynchings in Tennessee in several years. I should like to call the committee's attention to the report in 1944, November 23, at Clarksville, Tenn., James T. Scales, 16-year-old inmate of the State Training and Agricultural School for Negroes, was accused of the murder of both the wife and daughter of the school superintendent, white, was lynched by a mob of local whites. The youth according to persons who knew him, although personally maladjusted, had not previously given any basis for predicting participation in a crime as brutal as that attributed to him.

Of course, no one at all was either arrested or prosecuted at all for this lynching.

I should like also to call attention to the Columbia, Tenn., lynchings which occurred February 25, 1946, and thereafter, which I think have produced the greatest blot on America's record so far as the opinion of the nonwhite peoples of the world are concerned, of anything in the postwar events.

That was known generally as the Tennessee riots. Even assuming, which is not true, that there was resistance, nevertheless, the complete devastation and destruction of property and wanton killings in the attempts of the officers purportedly to put down resistance would certainly be punished under this bill, because I take it that an officer who exceeds his authority has no protection whatsoever by virtue of his official position, and that he would then come under the definition of a trespasser who would be just the same as a private citizen under no cloak of official authority.

Likewise, as a sequel to this Tennessee riot you have the wanton killings in jail by the officers of unarmed victims.

So the statement that there have been no lynchings in Tennessee simply means that the record is not being examined, but persons are speaking just from their own wishes.

I mention the foregoing facts because I think that they demonstrate that it would be a mistake to report the Hawkes or the Knowland bill instead of 1352, and the wholehearted nonpartisan approval which the Wagner-Moore bill has evoked should carry great weight with this committee. We think that the bill is a fine piece of legislative draftsmanship and if enacted would give the Federal law-enforcement officers a weapon with which to put an end to the disgrace of lynching.

As to the constitutional basis for S. 1352, the findings set forth in sections 1, 2, and 3 of S. 1352 invoke as the constitutional foundation of the proposed legislation the privileges and immunities clause, the due process clause and the equal protection clause of section 1 of the fourteenth amendment, the treaty-making power set forth in article

V of the Constitution, the power of Congress to define and punish offenses against the law of nations set forth in clause 10 of section 8, article I, and the obligations assumed by the United States under articles 55 and 56 of the United Nations Charter.

In my opinion, each one of the grounds furnishes full and independent constitutional sanction for all parts of the proposed legislation.

As to the fourteenth amendment, the decision of the Supreme Court of the United States in Screws versus 325 U. S. 91, upheld the constitutionality of section 20 of the Criminal Code as applied to prosecute a sheriff who beat to death a prisoner in his custody. In so holding, the court said at page 106:

> Those who decide to take the law into their own hands and act as prosecutor, jury, judge, and executioners plainly act to deprive a prisoner of the trial which due process of law guarantees.

I take it that all of us would admit that the right to a trial by due process of law is one of the Federal civil rights protected by the Constitution.

This case in our opinion is complete authority for the constitutionality of all of the provisions of the proposed bill insofar as they apply to State officers or State subdivisions. The provisions of the proposed legislation which punish private individuals for their participation in a lynching rest on a finding set forth in section 1 of the proposed bill that by virtue of condoning lynchings over the years, a custom has been created, that is to say, that persons can indulge in lynching without the fear of State prosecution, and to that extent I want to call the committee's attention to the civil rights cases which appear in 109 U. S. 3, which have been considered landmarks in United States constitutional law, that they recognize that in such a situation where the State has either endorsed, adopted, or enforced the private deprivation of rights, corrective action or remedial legislation was authorized by the fourteenth amendment.

In that case the Supreme Court pointed out that the sections of the civil rights act providing that all persons should have the same security of persons and property as white persons have "is clearly corrective in character, intended to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified." I quoted then from page 16.

If history has demonstrated that there is a custom in certain States to have extrajudicial punishment, summary judgment by individuals not cloaked with the authority of law, and if over the years the State has refused or failed to prosecute, apprehend, punish, or do anything else except condone, adopt, and enforce the private vengeance which these private individuals have meted out to the victim, then we say that this lynching has become a custom having the force of law in such States, that it amounts to State action, and that corrective legislation is constitutional.

Indeed it is to be noted that many of the statutes enacted in the decade following the adoption of the fourteenth amendment specifically referred to customs and treated conduct performed under the tradition or custom as State action.

Furthermore, the civil-rights cases specifically listed as a violation of the fourteenth amendment acquiescence by the State in such acts as

"allowing persons who have committed certain crimes (horse stealing, for example) to be seized and hung by the posse comitatus without regular trial." That is at page 23.

Moreover, when States punish murderers of white persons but do not punish white persons who lynch Negroes, by so doing the State thereby denies to Negroes the equal protection of the laws. The civil-rights cases recognize such inaction as the basis for corrective remedial legislation by Congress.

In connection, I should like to say that although we are arguing the case of the Negro, I am quite sure that the witnesses who appeared before the committee yesterday showed that the terror of lynching spreads much wider than the minority group of Negroes.

The eminent sociologist, Mr. Charles S. Johnson, president of Fiske University, and Herman F. Long, have indicated in their recent monograph, which was published by the Fiske University Press in 1948, that antipathy directed first against one minority group tends to generalize itself against all minority groups.

So, in the argument that I am making with particularity concerning Negroes, because I know that situation best, I should like to apply that law which has been demonstrated in the history of Nazi Germany where the persecution which started against the Jews spread until you had a general reign of terrorism over the entire German nation.

The sponsors of the fourteenth amendment in the committee hearings and debates which preceded the enactment of enforcement legislation stated repeatedly that where the State denied the Negroes the full protection of the law, Congress would have power to enact legislation punishing not only the State officers but all individuals who violated protected rights. Such statements were made not only by Representative John A. Bingham, the draftsman of section of the amendment who was in charge of its course through the House, and Senator Howard, in charge of the bill in the Senate, but also by numerous other Congressmen.

I refer to the Congressional Record (42d Cong., 1st sess.), at pages 83 to 85, 150 to 154, 251, 375, 475 to 477, 505 to 506. These Members of Congress stated that in their understanding the State was to be deemed to have denied the equal protection of the laws within the meaning of the fourteenth amendment when the inequality resulted from omission as well as commission. If a State failed to enforce its laws to protect those who were the victims of violence on account of race, color, religion, or national origin, then Congress had the power and the duty to enact legislation punishing the offenders even though they were private individuals because again that is corrective action against either the inaction or the misdirected action of the States.

They expressed it to have been their intent that Congress could punish murder or robbery which the State failed to punish because of the race, color, or previous condition of servitude of the victim.

I cite the committee to the Congressional Globe of the Forty-first Congress, second session, pages 3611 to 3613; the Congressional Globe, Forty-second Congress, first session, the appendix, pages 83 to 85, 317, 334, 429, 459, 475 to 477.

That such was the intent of the sponsors of the fourteenth amendment is today recognized by all modern students of the question. I refer the committee to Mr. Flack's book, The Adoption of the Fourteenth Amendment, pages 75 to 77, 81 to 85, 90, 232, 237, 239, 242, 245, 246, 247, 277; to Carl Brent Swisher's American Constitutional Development in 1943, pages 329 and 334; to Louis B. Baudin, Truth and Fiction About the Fourteenth Amendment (16 New York University Law Quarterly Review, November 1938), at page 19; to Howard Jay Graham, the Conspiracy Theory of the Fourteenth Amendment (47 Yale Law Journal, January 1939, p. 371).

No piece of legislation based on this theory has ever been presented to the Supreme Court. There is every reason to believe, however, that in view of the clear recognition of congressional power to proceed on this foundation, both in the legislative history of the fourteenth amendment and in the civil rights cases (109 U. S. 3, pp. 14 and 16, 23, 24, 25), the court will uphold this legislation.

As to the treaty-making power, in the United States Supreme Court's decision in *Missouri* v. *Holland* (252 U. S. 416) in 1920, dealing with the statute to enforce the Migratory Birds Treaty between the United States and Canada, the Supreme Court ruled that Congress may enact statutes to carry out treaty obligtaions even where in the absence of a treaty it has no power to pass such a statute.

We believe that the United States by entering into and ratifying the United Nations Charter as a treaty is obligating the United States to promote—

> universal respect for and observance of human rights and fundamental freedoms for all without distinctions as to race, sex, language, or religion—

In Congressional Record 8189–8190.

I am referring particularly to article 55 (c) of the United Nations Charter. By virtue of article 6 of the Constitution this obligation as a treaty becomes the supreme law of the land. Section 1 (b) of the Wagner-Morse bill contains a congressional finding that lynchings are denied because of race, color, or religion of human rights and fundamental freedoms. Section 2 (b) cites that one of the purposes of the proposed legislation is to promote respect for human rights and fundamental freedoms in accordance with the treaty obligations assumed by the United States under the United Nations Charter.

The treaty-making power, taken together with the United Nations Charter, I believe forms a second firm constitutional foundation for Federal antilynching legislation.

I think it would interest the committee to have the committee's attention called to the Oyama case versus California, which was decided here just Monday, 2 days ago. That case involved the California alien laws. In that case, the father, Kajoro Oyama, had paid for certain agricultural land and taken title in the name of his 6-year-old son, Fred, who was a United States citizen. The court in California held that that was done to avoid the effect of the land laws and declared an escheat. The decision of the California court was reversed by the Supreme Court of the United States. Mr. Justice Black and Mr. Justice Douglas concurred in the opinion. Mr. Justice Black wrote a separate concurring opinion in which Mr. Justice Douglas agreed, and it is important for our purpose that we see that Mr. Justice Black also upheld the effect of the United Nations Charter.

I would like to quote from the opinion:

> There are additional reasons now why that law stands as an obstacle to the free accomplishment of our policy in the international field. One of these reasons is that we have now pledged ourselves to cooperate with the United Nations to "promote * * * universal respect for, and observance of, human

rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." How can this Nation be faithful to this international pledge if State laws which bar land ownership and occupancy by aliens on account of race are permitted to be enforced?

If I might paraphrase, we might say, How can this Nation be faithful to this international pledge if States refuse to give protection to persons within their jurisdiction on account of race, color, creed, religion, or national origin, against violence?

So it seems to me that under the decision of Missouri versus Holland and under the treaty of the United Nations Charter——

Senator FERGUSON. Do you have any extra copy of that?

Mr. HOUSTON. I will be very happy to leave that.

Senator FERGUSON. Leave that, with your statement.

Mr. HOUSTON. I shall be very glad to, sir. It seems to me we have a complete independent ground for this proposed legislation and a ground which was not in existence at the time that the bills upon which the Hawkes and Knowland bills were adopted were originally drafted back in the thirties.

I should like now to take up certain specific provisions of the bills.

The Knowland and the Hawkes bill are very much alike. The Hawkes bill, however, does not contain the provision, section 6, about the so-called Lindbergh law, which is also contained in section 9 of the Wagner-Morse bill. As to the necessity for extending the Lindbergh law to the crime of lynching, I should like to refer to the testimony that I gave to a subcommittee, on February 14, 1935, of the Committee on the Judiciary, Seventy-fourth Congress, first session, in which I pointed out that in lynchings which occur close to the line, we have in the national association asked the Department of Justice to intervene and investigate under the Lindbergh law.

For example, I am quoting now from the testimony on page 27, paraphrasing that testimony: On October 4, 1934, near Darien, Ga., the house of one Curtis James was broken into. James was shot and abducted by the mob, but in spite of intensive search, his body was never found. On October 15—that is, more than 1 week after his disappearance—the national association wrote the Department of Justice asking why the abductors of James could not be prosecuted under the Lindbergh law.

Darien, Ga., is very close to the State line. On October 20, the Department replied that there is nothing to indicate that the person alleged to have been kidnaped was transported in interstate commerce and was held for ransom, reward, or otherwise.

Claude Neal was kidnaped from jail in Brewton, Ala., on October 26, 1934, admittedly taken across the State line, and lynched at Marianna, Fla. The Department of Justice refused to investigate that lynching under the Lindberg law, in spite of the fact that there was transportation in interstate commerce, on the ground that there was no pecuniary motive or interest in the kidnaping and the transportation.

Senator FERGUSON. In other words, no demand, really, for ransom.

Mr. HOUSTON. That is right. So I think it is absolutely indispensable and clearly within the jurisdiction of Congress to extend the kidnaping law to transportation in interstate commerce for the purpose of lynching.

Senator FERGUSON. The reading of the so-called Lindbergh law would indicate that it did not apply to lynching?

Mr. HOUSTON. At the present time; yes, sir.

Senator FERGUSON. The way it is worded.

Mr. HOUSTON. Therefore we are asking an amendment which will extend it to that degree.

I should like, also, to call attention particularly to section 8 of the Wagner-Morse bill——

Senator FERGUSON. Has there been any indictment at all under the Lindberg Act?

Mr. HOUSTON. For lynching?

Senator FERGUSON. Yes.

Mr. HOUSTON. No, sir.

Senator FERGUSON. The Department has always declined even to investigate?

Mr. HOUSTON. On the ground that it was not within the scope of the law.

Senator FERGUSON. But could they not have gone into the conspiracy angle?

Mr. HOUSTON. I think they could have, but they still say that even then—you are not talking about the Lindbergh law; you are talking about section 20.

Senator FERGUSON. Yes.

Mr. HOUSTON. I think that is true.

Senator FERGUSON. At least they could have made their investigation under that section.

Mr. HOUSTON. I think that is quite true, Senator; but on the other hand, we have been troubled in many respects by reluctance on the part of the Department of Justice to take hold, except where it had what you might call unmistakable grounds of jurisdiction.

Senator FERGUSON. In other words, you have almost to prove the conspiracy first before they will investigate.

Mr. HOUSTON. That is right.

I would like to call the committee's attention to section 8 of the Wagner-Morse bill, which is compensation for victims of lynching, which makes the governmental subdivisions liable to civil penalty in case of lynching occurring within the subdivision.

There has been some talk about the question of exemption of the States from suit. Of course, that does not apply to governmental subdivisions. What I should like to point out and emphasize, however, is that this provision has been in all of the proposed antilynching laws. It is nothing novel. As a matter of fact, it goes back even before the Norman laws. In the old law of the hundred in the Anglo-Saxon days, the corporate, the hundred, was visited with export liability for murders found within the limits of the hundred.

Senator FERGUSON. The old hew-and-cry law.

Mr. HOUSTON. That is right, sir. For that reason it seems to me that it is idle to talk about putting the civil responsibility upon the county as being a violation of the Constitution.

I might also say one other thing, and that is this: The very problem of proof which may be insuperable in criminal prosecutions is not present in the situation of the civil action. You also have in the civil action the possibility of directed verdicts which you don't have in the criminal prosecution.

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On top of that, from the standpoint of public responsibility, when the members of the community feel that they have an immediate economic interest in preventing lynching, I think that the temper and the climate in the community will be so antagonistic to lynching that we will need the criminal prosecution much less if we had a civil liability than we would if we had no civil liability.

Finally, as to this, I should like to say that the civil liability limited between 2,000 as a minimum and 10,000 as a maximum is frequently less than the cost of a trial; for example, such as the trial of the lynchers of Willie Earl in South Carolina.

In many respects what is actually happening in fact is not placing a burden on the community, but really saving the community from all of the investigation and strain and expense of criminal prosecution.

Senator FERGUSON. A question was raised yesterday about the difficulty of collecting a judgment. Would you give us any help on that? What might be done to simplify or allow collection of these judgments?

As a rule, it is a complicated procedure to collect a judgment against a State or a municipality or subdivision of a State.

Mr. HOUSTON. That is true, but there would be two things, it seems to me. One is that you have a power of contempt, which certainly would prevent any State officer from willfully interfering with an attempt to collect a judgment. You might have in many instances property of the county which is not used for direct governmental purposes. You might have property, for example, which has been taken in on tax sales and other things like that. Or you might have county revenues which might be available. At any rate, I think that the very fact of the existence of a judgment, even if unsatisfied, would have a corrective effect, a prophylactic effect, so to speak, even if the judgments were not collectible by order process, just as ordinary civil judgments are, so the property of the county used for governmental purposes would be exempt, like the jail and things like that; nevertheless, I think within the provisions of State laws there would be the time over which one could be looking for property, when one could be looking for other assets of the county, or it might be that there would be State laws for authorization of a levy, for example.

Senator FERGUSON. Sometimes they provide for a tax levy.

Mr. HOUSTON. A tax levy to satisfy such judgments. Of course, if the officials did not levy the tax, then I think they would come within the provisions of contempt of the Federal court for not carrying out the mandate under the State laws upon order.

I should like, because the constitutionality of the bill has been so clearly explained by Senator Morse, to conclude my testimony with just about three statements.

One, on the question of the imperative necessity of enacting antilynching legislation. I would like to call the international situation to the minds of this committee. I would simply like to remind the committee first about the action of the Panamanian National Legislature in rejecting the proposed lease of 13 military bases to the United States. That goes back to race discrimination, which started at the

time of the building of the Panama Canal, when the silver standard was established for Panamanians and colored workers, whereas American workers were placed on the gold standard.

Also, it goes back, unfortunately, to the fact that our American troops in recreation attempted to introduce in Panama segregation and discrimination which did not exist in Panama itself.

I call your attention to the fact that the record of the United Nations shows that on issues of color, all other nations, nonwhite nations of the world, vote against the United States and Great Britain. They leave Great Britain and the United States completely alone upon issues which raise the color issue.

More important, I should like to have the authority to file with the committee a copy of Army Talks, No. 210, which was released just January 17, 1948. Those are instruction pamphlets for commanding officers for the purpose of instructing all the personnel under their commands.

On page 1 this talk points out the fact that race propaganda is what the enemies of the United States beam to the nonwhite nations of the world. It mentioned particularly that right after Pearl Harbor, Japan raised the issue as to how the United States could be fighting for racial equality or to eliminate racial discrimination when there was race discrimination in the United States.

In the Detroit riots, this pamphlet says that Japan had a field day beaming to the nonwhite nations the fact of these disorders occurring in the city of Detroit.

Likewise, they point out the fact that these difficulties in the United States are reported to the nationals of the nations which are involved, for example, difficulties against Mexico. I think the committee can find that even in the treaties concerning the importation of Mexican nationals for agricultural labor, serious questions have been raised in the Mexican Chamber of Deputies concerning the treatment accorded Mexican laborers here in the United States on the ground of national origin.

The Army Talks say that if we do not eliminate race discrimination, religious discrimination, in a global war we are putting the United States under a handicap that is almost insuperable.

That, it seems to me, since lynching is the most violent, virulent manifestation of racial prejudice would be the point to start. Let us then wipe out the type of thing which does not even let these minorities come into a court, which gives these minorities the right to security of life and person and property. That, at least, gives us the time in which to argue out perhaps other things, such as we argued out the restrictive covenant cases in the United States Supreme Court last week, such as now is an issue before the United States Supreme Court and the conscience of the Nation on the question of equality of educational opportunity in the State of Oklahoma.

The importance of lynching is right here. Suppose in the Sipuel case, this girl under the mandate of the United States Supreme Court should report to the University of Oklahoma and there should be met with violence directed against her on the ground of her race or color.

If we are going to have a government of laws, then we must establish the supremacy of the law, and there can be no supremacy of law unless the crime of lynching is wiped out. Since the States have not done it, then it is up to the Federal Government.

I call the chairman's attention to the fact that the whole base of this proposed legislation is entirely corrective.

Senator FERGUSON. Do any State laws punish lynching?

Mr. HOUSTON. There are a number of State laws. They were collected in Chadburn's Lynching and the Law, back in 1934. But unfortunately the State laws are honored in the breach rather than in the observance.

Senator FERGUSON. Of course all of them would hold it murder, would they not?

Mr. HOUSTON. I was just going to say, as a matter of fact, proof that this legislation is corrective is the fact that every State has a law against murder, and it is the very fact that they do not enforce their laws against murder which means that there is a State inaction which again and independently it seems to me is the basis for this corrective legislation. That is a compilation, a very authoritative work. I think Your Honor would find all the reference in the work you would need to establish the State laws and also the base for enactment of Federal legislation as of the date of that publication.

Mr. Chairman, at this point I ask that you permit me to insert in the record some excerpts from a pamphlet published by the Department of the Army designated as Armed Forces Talk 210.

Senator FERGUSON. It will be made part of the record.

(The material referred to is as follows:)

Three-fourths of the people of the world are what we call colored. These people naturally look to the treatment of our colored citizens to see what we really mean when we speak of democracy. Racial and religious prejudice alienates the confidence of the vast nonwhite populations as well as other peoples, thwarts their hopes and our hopes of peace and freedom, and ultimately creates the conditions from which future global wars can develop.

How we treat minorities is, therefore, more than a matter of mere domestic concern. Almost 13,000,000 people in the United States were born in Europe The mistreatment of some Mexicans in the United States echoes throughout North and South America; a race riot provokes discussions and resentments in Africa, the Philippines, and among the 800,000,000 nonwhite people in China and India.

Throughout the world there are millions of people who believe that World War II was a total war against fascism and Fascist ideas. Their concept of peace includes the hope—even the determination—that there will be no such thing as superior and inferior peoples anywhere in the world.

* * * * * * *

The magic of race prejudice, the Japanese discovered, had performed miracles in Europe. If Hitler could seize Germany and disrupt Europe with the help of race hate, the Japanese saw no reason why they couldn't do the same thing to Asia. About a week after Pearl Harbor, the Japanese were broadcasting: "How can America be fighting for racial equality when it does not exist in America?" During the 1943 race riots in Detroit, the Japanese propagandists had a field day broadcasting the news to hundreds of millions of nonwhites in Asia and throughout the world.

Senator FERGUSON. We will take a very short recess and then the next witness is Mr. Arent.

(A short recess was taken.)

Senator FERGUSON. The committee will come to order.

You may proceed, Mr. Arent.

STATEMENT OF ALBERT ARENT, CHAIRMAN, EXECUTIVE COMMITTEE, WASHINGTON, D. C., CHAPTER, AMERICAN JEWISH CONGRESS, WASHINGTON D. C.; ACCOMPANIED BY JOSEPH B. ROBISON ATTORNEY, STAFF OF COMMISSION ON LAW AND SOCIAL ACTION, AMERICAN JEWISH CONGRESS, NEW YORK CITY; AND SANFORD H. BOLZ, WASHINGTON REPRESENTATIVE, AMERICAN JEWISH CONGRESS

Mr. ARENT. I am appearing here in behalf of the American Jewish Congress. My name is Albert E. Arent. I am chairman of the executive board of the Washington, D. C., chapter of the congress, whose national headquarters are 1834 Broadway.

With me is Mr. Joseph Robison, a lawyer with the commission on law and social action of the American Jewish Congress.

I should like permission of the committee to have him participate in any discussion that may develop.

After the very excellent and thorough statement which Mr. Houston gave this morning, I think that I can curtail my own statement somewhat and merely say, as spokesman for the American Jewish Congress, that I think I can endorse wholeheartedly the position which he has taken and most of the analyses which he has offered.

May I ask that the prepared statement which we have handed to the clerk of the committee be made a part of the record? In that case, I could curtail my testimony.

Senator FERGUSON. It will be placed at the beginning without interruption.

(The prepared statement of Mr. Arent follows:)

The American Jewish Congress was organized in part "* * * to help secure and maintain equality of opportunity for Jews everywhere, and to safeguard the civil, political, economic, and religious rights of Jews everywhere." Our movement recognizes fully that equality of opportunity for Jews can be truly secured only in a genuinely democratic society.

Democracy is jeopardized wherever the orderly processes of government are set aside Experience here and abroad has shown that the lives and safety of all minorities are in danger whenever strong-arm squads are permitted any leeway. The three bills, S. 42, S. 1352, and S. 1465, are designed to protect and extend our constitutional system of due process and equal protection. As Americans who fervently wish to see that system maintained, we support these bills.

The purpose of the three bills is a simple one. It is to prevent conduct which is universally recognized as criminal and wrong. It is to invoke the authority of the Federal Government in situations where experience has shown it to be needed.

There are some differences between the three bills which I shall discuss later. Generally, S. 42 and S. 1465, which are almost identical in substance, are more narrowly drawn that S. 1352. We favor adoption of S. 1352 with certain additions to the section which contains legislative findings.

2. Lynchings subvert constitutional principles

Lynching is a matter of national concern. This can readily be seen as soon as the nature of lynching is understood. It is not merely murder, assault, or destruction of property. Those crimes ordinarily can be and are reached by the orderly processes of local government. The essence of lynching is that its intent and purpose is to usurp governmental powers. It occurs and is condoned only where local government fails to perform its functions or acts in such a way as to invite illegal conduct by private groups.

Our Constitution guarantees to each State "a republican form of government" (art. IV, sec 4). The fourteenth amendment prohibits each State from depriving "any person of life, liberty, or property without due process of law," or from

denying "to any person within its jurisdiction the equal protection of the laws." International treaties require the United States to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (59 Stat 1045-1046). Each of these fundamental requirements of our Federal system is violated when a lynching occurs. A lynching substitutes private arbitrary mob rule for the republican form of government, with its safeguards of due process and equal treatment The arbitrary meting out of "justice" by one set of citizens to another replaces the republican form of government with a rule of terror.

State participation in this replacement is essential to its effectiveness What happens is that the machinery of the State, or part of it, creates the conditions which permit the functioning of these private governments. It does so by inaction and acquiescence even where it does not do so by direct participation It thereby becomes, at the least, a silent partner to the lynching and gives the reality of State authority to the direct participants.

It is no accident that lynchings occur with official condonation and assistance. They occur where the local community is unwilling to accord to underprivileged groups the equal rights which our Federal Constitution guarantees. The purpose is to keep the weaker group "in its place" by the imposition of special punishments and penalties applicable only against that group. Since that cannot be done through the official government, because of the restrictions of our National Constitution, the official government adbicates to the mob. The latter then achieves the desired unconstitutional invasion of private rights.

There can be no question as to the moral as well as the legal duty of the Federal Government to prevent such subversion of constitutional principles. There would be little point to a Federal Constitution containing restraints on the action of States, as ours does, if the National Government refused to enforce those restraints.

3. The need for Federal action

The objections to these bills are, at best, highly technical. The bills are aimed at conduct which is universally condemned. Only an artificial and unrealistic refusal to recognize that lynchings are more than mere illegal resorts to force can be offered as a ground for keeping the Federal Government out.

The bills are not aimed at any one area. They are not designed to impose the legitimate moral code of one part of the union over the legitimate moral code of another. The bills are aimed at lynching. That is a proper target for action by any government. If Federal action is needed to prevent that evil, it is justified. If it is not needed, no harm can be done by passage of these bills.

Actually, of course, Federal action is needed The existence of statutes in every State making lynching a crime is irrelevant. It is what the State and its agents do that counts, not what they say (*Screws* v. *U. S.*, 325 U. S 91 (1945). See also Hale, Robert L., Unconstitutional Acts as Federal Crimes (16 Harvard Law Review 65, 78-92 (1946)).

A series of peculiarly revolting lynchings took place during 1946 which led to the creation of the President's Committee on Civil Rights. A primary task of that committee was to study those incidents. It was also asked to study the steps which were taken and the steps which were not taken to redress the wrongs done, The unanimous conclusion of the 15 committee members eliminates all doubt as to the need for Federal action. The committee's report documents the widely held belief that local forces of law and order are too frequently inadequate to protect national constitutional rights. The committee said (Report, p. 23):

"The communities in which lynchings occur tend to condone the crime Punishment of lynchers is not accepted as the responsibility of State or local governments in these communities. Frequently, State officials participate in the crime, actively or passively * * *. Condonation of lynching is indicated by the failure of some local law enforcement officials to make adequate efforts to break up a mob. It is further shown by failure in most cases to make any real effort to apprehend or try those guilty."

The committee concluded that the Federal Government has the power and duty to step in in such situations. It specifically recommended passage of a Federal antilynching law.

4. Comparison of the three bills

I turn now to consideration of the terms of the three bills before the committee. Since S. 1465 is for the most part an elaboration of S. 42, I shall limit myself to discussion of S. 1465 and S. 1352.

S. 1352 declares that the right to be free of lynching is a Federal right. It defines lynching as violence by two or more persons against any person or his property because of race, creed, color, national origin, ancestry, language, or religion, or violence against persons or property with the purpose of imposing punishments not sanctioned by law. Participation in a lynching is made a crime as is failure on the part of public officials to prevent a lynching.

S. 1465 creates no Federal right. The definition of lynching does not include violence against property. The criminal provisions apply only to public officials responsible for lynching by action or inaction.

Both bills contain provisions making local government subdivisions where lynchings take place liable in damages to the victims or their next of kin. Both require the United States Attorney General to institute investigations when information about reported lynchings is submitted to him

The chief differences between the two bills is that S. 1352 rests on broad jurisdictional grounds and consequently applies to all persons participating in or aiding lynching. The penalties of S. 1465 apply only to State officers or employees. The broader coverage of S. 1352 is both necessary and proper It rests on the findings of section 1 of that bill that "A State deprives a person of life, liberty, or property without due process of law and denies him the equal protection of the laws when the State's inaction has the effect of a discriminatory withholding of protection," and that condonation of lynching by failure to punish "gives the color and authority of State law to the acts of those guilty of the lynching, punishment, or other denial."

These findings are not technical They are a realistic description of what actually happens when a lynching takes place. Whether State officials conduct or merely condone lynchings, the underlying official policy, the effect on the victim, and the effect on the public are the same. State officials cannot escape responsibility for violence committed within their jurisdiction by pleading that they did not do their duty

The President's Committee on Civil Rights specifically recommended that Federal anti-lynching laws cover "action by either public officers or private persons meting out summary punishment and private vengeance upon a person because of his race, color or religion" (Report, p. 158). It made this recommendation only after a careful study of the necessities of the situation and the scope of the powers of the Federal Government.

The Supreme Court has held that a State violates constitutional guaranties where, by inaction, it fails to punish improper invasions of property rights. *Truax* v. *Corrigan*, (257 U. S. 312 (1921)). No reason appears why the Supreme Court should reach a different result where the right invaded is the right to life itself.

There are other differences between the two bills which I shall not discuss here. Generally the American Jewish Congress believes that the provisions of S. 1352 are better designed to meet the problem of lynching in all of its ramifications. We therefore support that bill without reservation.

5. Suggested changes in legislative findings

We wish to suggest a few changes in the legislative findings in S. 1352.

As I have indicated, the republican form of government ceases to exist when mob rule takes the place of civil government. Federal action to prevent lynching is therefore an appropriate device for fulfillment of the constitutional mandate that "The United States shall guarantee to every State in the Union a republican form of government." (Art. IV, sec. 4.) Hence we make the following suggestions:

First: Adding to section 1 of S. 1352 a fourth paragraph as follows:

"(d) Where a State fails to exercise its police powers in a manner which protects all persons equally without discrimination because of race, creed, color, national origin, ancestry, language, or religion, or permits persons not expressly designated as its agents to punish any person within its jurisdiction for crimes or alleged crimes, without trial or other due process of law, and condones such conduct by participating in or facilitating such conduct or by failing to punish either those of its officials who permit such conduct or those guilty of the conduct, the State fails to maintain a republican form of government."

Second: Adding to section 2 of S. 1352 a fourth paragraph as follows:

"(d) To guarantee to every State in the Union a republican form of government."

The report of the President's Committee on Civil Rights, as well as testimony given at this hearing, demonstrates that the evils described in general terms in

the present findings have frequently occurred in the past. The findings should so state. We therefore suggest two further changes.

Third: Substitution of the following language for the last sentence in the first paragraph of section 1 (a) of S. 1352:

"Deprival by a State of life, liberty, or property without due process of law and denial by a State of equal protection of the laws can be and has been accomplished by inaction as well as by action, by discriminatorily withholding protection as well as by affirmative discriminatory action. Failure on the part of a State to use its police powers to prevent or punish acts directed against members of a racial, religious, or national group although such acts are declared to be illegal by the laws of the State and are punished when committed against members of other groups constitutes such deprival or denial by the State."

Fourth: Addition of the following language at the end of the third paragraph of section 1 (a) of S. 1352:

"Condonation by the State has taken the form of cooperation by State officials in the illegal acts of private individuals, failure by State officials to give protection to persons within the State's jurisdiction or within the custody of State officials, failure to apprehend offenders, failure to institute criminal proceedings against them, discriminatory selection of juries, and other forms."

Mr. AREnt. I should like to incorporate sections in my actual statement.

The American Jewish Congress was organized in part to—

help secure and maintain an equality of opportunity for Jews everywhere, and to safeguard the civil, political, economic, and religious rights of Jews everywhere.

Our movement recognizes fully that equality of opportunity for Jews can be truly secured only in a genuinely democratic society.

Democracy is jeopardized wherever the orderly processes of government are set aside. Experience here and abroad has shown that the lives and safety of all minorities are in danger whenever strong-arm squads are permitted any leeway. The three bills, S. 42, S. 1352, and S. 1465 are designed to protect and extend our constitutional system of due process and equal protection. As Americans who fervently wish to see that system maintained, we support these bills.

Senator EASTLAND. Of course, I agree with the statement that a strong-arm squad not be permitted leeway, but take the situation in Chicago in 1927, when we had the St. Valentine's Day massacre. You had a great number of gangs there. Are you saying that the Federal Government should go in those States and try to exercise police power because strong-arm squads have committed murder?

Mr. AREnt. I am saying, Senator, where a problem of mob violence has persisted——

Senator EASTLAND. I want to get an answer to my question.

Mr. AREnt. In the absence of adequate State enforcement, I can conceive of a situation where the Federal Government should step in.

Senator EASTLAND. Of course, we have not had adequate State enforcement of law in murder in the State of Illinois, as you well know. Do you think we should have a Federal statute to punish for murder, and that the Federal Government should supersede the Government of the State of Illinois?

Mr. AREnt. I accept the basic principle that the primary responsibility shall be that of the State. My second step would be to say that wherever the problem has become a persistent one, one of serious national implications, the Federal Government must then take steps.

Senator EASTLAND. Take a series of gang killings. Take the "purple gang" in New York and Detroit, which has had active criminals for years that have never been apprehended.

Senator FERGUSON. I would have to correct "have never been apprehended." We have convicted them and put them in prison.

Senator EASTLAND. Take the "Capone gang."

Mr. AREnt. I would favor a Senate investigation to determine whether the absence of enforcement there is such as to require Federal action, just as Federal investigation——

Senator EASTLAND. Then you think that if they have not been convicted, the Federal Government has the power, under the Constitution, to punish for the crime of murder, to go in a State and exercise police power against murder? Is that your contention?

Mr. AREnt. I maintain that as a constitutional matter, if there is persistent State inaction and inadequate enforcement, the Federal Government does have that power. I maintain, however, that the Federal Government ought to consider and question actively in those things only after investigation which points out the national significance of the situation.

Senator EASTLAND. Of course a murder is of national significance.

Mr. ROBISON. I would like to suggest one other consideration.

Senator EASTLAND. I was asking him some questions, not you. Just wait a minute, please.

Mr. AREnt. I believe that murder can become nationally a problem which might require——

Senator EASTLAND. That is, all lynching is murder?

Mr. AREnt. Right; but it is a form of murder which has had the condonation of large segments of the population.

Senator EASTLAND. I do not think that statement is true. I think that statement is utterly false. I do not think you know anything about it.

Mr. AREnt. And it is a form——

Senator EASTLAND. How many lynchings did we have last year in the United States?

Mr. AREnt. Offhand, I can't give you the number. I vaguely recall the number is six.

Senator EASTLAND. It was one, was it not? Would you state that lynchings are condoned by a majority of the people? I say that statement is utterly false.

Mr. AREnt. Another ground of distinction between the ordinary murder situation and the lynching situation is that the lynching situation usually represents an action taken on grounds of discrimination because of race, color, or sex.

Senator EASTLAND. Why do you say it does? Explain that statement. You say that it usually does. How do you know that that is true?

Mr. AREnt. Because over the long history of the thing it has been primarily directed against the colored population.

Senator EASTLAND. In rape cases, is it not true that, in terms of percentage, based upon the crime of rape committed by a white man and that by a Negro, the lynchings are as great in one case as in the other?

Mr. AREnt. I think in terms of percentage——

Senator EASTLAND. Is that not true?

Mr. AREnt. I am not saying there aren't occasional lynchings of whites.

Senator EASTLAND. If that is true, how could it be based on discrimination because of race, when white men are lynched for it, too?

Mr. ARENT. Could I have my colleague answer that?

Mr. ROBISON. In the Louisiana case the men lynched were not in any way implicated in any crime.

Senator EASTLAND. Of course, that was murder.

Mr. ROBISON. It was murder which followed the usual lynch pattern, Senator. It has been recognized not only by the group that is testifying now, but by an outstanding group that have studied the matter very thoroughly recently, the President's Committee on Civil Rights, that the purpose of lynching is designed to suppress a particular portion of the population.

Senator EASTLAND. Is that true? You have white men who are lynched for it, as many in proportion as commit the crime.

Mr. ROBISON. I beg your pardon, Senator. There have been no lynchings of white people in recent years. The number of Negroes involved in rape in recent lynchings has been very small.

Senator EASTLAND. Yes, I think that is true.

Mr. ROBISON. There is no issue of rape involved in the Minden case.

Senator EASTLAND. What was involved in the Minden case?

Mr. ROBISON. One Negro, I believe, was charged with some form of theft. I am not sure what it was. Apparently it was not considered a very serious matter because he was released in the cognizance of a single person.

Senator EASTLAND. Who told you that? I say it was based on theft. Who told you that?

Mr. ROBISON. It is all set forth in the report of the President's committee.

Senator FERGUSON. Would it be necessary under these laws as proposed to prove that the lynching was caused because of prejudice.

Mr. ROBISON. Under one part of it, I believe. One of the two bases of the section which defines lynching does refer to race, religion, and so forth.

Senator FERGUSON. But do you not think the bills go further than that and define what a lynching is? It would not make any difference whether the cause was because of prejudice or because it was just an attempt to carry out the law?

Mr. ROBISON. That is right.

Senator FERGUSON. If you did not do that, would it not be difficult on occasions to prove that so-called prejudice or malice?

Mr. ROBISON. That is really irrelevant, Senator. The basic approach of the bill is that it is designed to correct a situation where the State permits private individuals to take the law into their own hands.

Senator FERGUSON. I can see some cases where you could prove it but in other cases it may be very difficult if you had to use a local jury, even in a Federal court that has a wide jurisdiction. It may be difficult to prove that one item of prejudice.

Mr. ROBISON. The proof is always difficult to make in any case.

Mr. ARENT. Basically it comes down to this: Lynching is a form of violence which does more to intimidate the American people out of exercising their proper constitutional law, which does more to make law-abiding people fearful and insecure, than any other form of violence. It does more than any other form of violence to disgrace any nation in the eyes of the world.

Senator FERGUSON. It shows a lack of law and order.

Senator EASTLAND. Of course, it shows lack of law and order.

Mr. ARENT. It makes the fact extremely important that this Government stand up firmly and bolster State enforcement, in such a way as to show the world that we mean business when we say that is a country of law and order.

Senator EASTLAND. You take the Minden, La. case. Frankly, I was in Minden, La., when that happened. It was a terrible crime. The people who did it should have been punished, but the statement that one of the men charged with that crime was accused of petty theft is totally wrong. I think we should confine ourselves to the facts when we discuss a case like that.

Mr. ROBISON. When I referred to the Minden, La., incident, I meant the Monroe, Ga., case.

Mr. ARENT. Mr. Chairman, I worked for about 2 years in the Civil Rights Section of the Department of Justice when that section was first being organized and helped to draft the blueprint of Federal jurisdiction at that time. In the enforcement of the Federal jurisdiction, we found that there were a great many situations where the mere threat of Federal action was sufficient to prevent very unfortunate outbreaks of lawlessness, where Federal investigation served a very sound purpose in supporting the better elements of the community in putting teeth into a situation where the population had become accustomed to indifference.

Senator EASTLAND. I think you are right there. That is correct.

Mr. ARENT. We found in the matter of lynching that the existing statutes were quite inadequate, and since the Screws case came along and required willful violation of a known Federal or constitutional right, it has been even more difficult to put a genuine threat of Federal protection of the lives of men against mob violence. We think that bills of this sort, any one of the three, although we agree with Mr. Houston in favoring the broader bill, any one of the three will serve to make specific the Federal crime of willfully permitting people to be lynched, willfully participating in the lynching of people, and in that way will permit a direct test of Federal authority in the field.

I think the warning which it hands out, the certainty of action and punishment, is what counts. It does not matter that you have a death sentence for murder and a 20-year maximum for lynching. If they know they are not going to be prosecuted for murder or convicted for murder, but they know there will be a thorough investigation by the very competent FBI of a violation of a Federal right, followed by a presentation to a Federal grand jury and a sincere effort at prosecution, whether there is conviction or not—it is the certainty of Federal action, the fear of genuine, impartial enforcement of law and order that is going to make a Federal lynching bill a bulwark of law and order in this country.

Senator FERGUSON. Have you examined the two opinions of the Attorney General? In one of them he seems to hold or claim that the provision for civil liability against the State or municipaility is unconstitutional.

In the other one he seems to think that the provision providing for

punishment of individual lynchers is unconstitutional. Have you examined those?

Mr. ARENT. I have not, sir. I have not been with the Department of Justice for the past several years.

Senator FERGUSON. He raises the unconstitutionality in the one and does not in the other, and then on another point he says the other bill is of doubtful constitutionality.

Mr. ROBSION. Were those submitted to this committee?

Senator FERGUSON. Yes, and I made them a part of the committee record the other day. I wish you would go over them. I may want to make a written statement in relation to them.

Mr. ARENT. I might say this: There are competent students of constitutional law, men in the civil rights section, men out in private practice, and in the universities. who are satisfied that there are very sound bases for the constitutional support of even the Morse-Wagner bill, the broader bill.

Senator EASTLAND. Which cases do you rely on?

Mr. ARENT. In terms of State inaction, I think two actions against Corrigan.

Senator EASTLAND. Which case is that?

Mr. ARENT. That is a labor case (257 U. S. 312).

Senator EASTLAND. Would you please give me the style of the case?

Mr. ARENT. *Truax* v. *Corrigan*. However, there are in a recently published book, reviewing the history of civil rights, Federal protection of civil rights, citations to a good many law review articles which go into these questions.

Senator EASTLAND. Law review articles?

Mr. ARENT. And which assembles authorities. In other words, I could not without taking a day's time of this committee explore completely the constitutional questions involved. I simply wanted to make the point that there is respectable authority for the bill, respectable analysis and citations to support it, both under the fourteenth amendment and under the republican form of government.

Senator EASTLAND. I would like you to file a brief on the constitutionality.

Senator FERGUSON. You might want to appear on the 27th when the question of constitutionality will be raised.

Is that not right?

Senator EASTLAND. That is right.

Senator FERGUSON. Mr. Houston has gone, has he not? He might want to know about that date, also, and he might want to be here to listen to the argument, and he may want to file a brief later. That is what I suggest that you might want to do.

Mr. ARENT. However, the great public good that can be accomplished in my judgment by adopting a bill like the Wagner-Morse bill lies in the fact that the principle of law and order is established and put in a form where the Federal jurisdiction can be properly tested, where all these arguments which have been advanced and which have resulted in a lot of loose discussion as to constitutionality can actually be brought before the court and tested.

What harm can be done by having this bill on the books with some constitutional questions, but respectable analysis behind the supporting position? When the bill as it stands in no way impairs the rights of any person, any decent law-abiding person. It merely stands as a

threat to the man who is willing to join a mob and commit violence, murder.

While on the one hand it cannot harm anybody to adopt such a bill, on the other hand it gives you a chance to establish the proper constitutional principles, and there is a mighty good severability clause in the Wagner-Morse bill which, if the whole bill is not constitutional, would permit the constitutionally sound parts to remain.

I would like to address myself for a little while, if I may——

Senator FERGUSON. Of course, you realize when you take a bill to the floor, it is well to have it, in the opinion of those who are for it, constitutional.

Senator EASTLAND. If we followed that premise, it would amount to asking every Member of the United States Senate to violate his oath of office.

Mr. ARENT. I emphasized strongly as I could——

Senator FERGUSON. To be reasonably certain that is constitutional?

Mr. ARENT. There is a reasonable authority on its constitutionality and I believe from such work that I have done in the field that I am quite confident that one of the several lines of analysis will stand up.

Senator FERGUSON. In other words, you are reasonably certain that the law is constitutional.

Mr. ARENT. Quite right. I am pointing out even if certain aspects of it were ultimately found to be unconstitutional, you would not have harmed anybody in the interim by putting the question to the test. It is unlike certain situations where you are controlling business or otherwise interfering with a man's lawful life on a proposition which has some doubtful constitutionality. Here you are simply setting up a standard of decency which no respectable individual, no decent individual, would attempt to violate.

Although I regard the fourteenth amendment as the basic support for this legislation and regard the international treaty aspect as being an interesting possibility, I should like to discuss, since Mr. Houston discussed the other so fully, the constitutional guaranty of republican form of government as a third alternative in supporting the constitutionality.

A lynching substitutes private arbitrary mob rule for the republican form of government, with its safeguards of due process and equal treatment. The arbitrary meting out of "justice" by one set of citizens to another replaces the republican form of government with a rule of terror.

State participation in this replacement is essential to its effectiveness. What happens is that the machinery of the State, or part of it, creates the conditions which permit the functioning of these private governments. It does so by inaction and acquiescence even where it does not do so by direct participation. It thereby becomes, at the least, a silent partner to the lynching and gives the reality of State authority to the direct participants.

Senator EASTLAND. Suppose in the case of several lynchings there is an investigation in the case by the State authority and the matter is submitted to a grand jury. In some of those cases no indictment is returned, and in others there is an indictment and trial and the accused turned loose. Would the State become a party then by inaction?

Mr. ARENT. I think the policy of the Department of Justice in the past on that point indicates the proper dividing line. Where there has been a genuine demonstration of State activity in an effort to punish the person.

Senator EASTLAND. They investigate it and submit it to a grand jury.

Mr. ARENT. Then as a matter of administrative policy the Federal Government would not interfere.

Senator EASTLAND. I am not speaking of the Constitution now. Under the republican form of government clause, would not the State be a party to it if that were done?

Senator FERGUSON. Of course, any one of these laws makes that a Federal crime. No matter what the State crime is and no matter whether they were convicted under the State law, they could still be convicted under the Federal law. It would not be double jeopardy.

Mr. ARENT. I recognize that, but I also recognize that the Federal Government does not exercise many of the powers which it has because a local authority is doing an effective job and it is not necessary to invoke the Federal powers. The powers are there, though.

Mr. ROBISON. In the situation which Senator Eastland suggested, the fact remains that there has been a lynching, there has been violence, a violation of law, and no one had been convicted. I think on any standard the State has failed in that situation, Senator. The Federal Government must then consider whether or not it can——

Senator EASTLAND. Then we would set up a Federal police code for all crimes.

Mr. ROBISON. We only set up Federal police courts where the experience shows the problem has been created.

Senator EASTLAND. Under the republican form of government, if what you were saying is true, we would set up a Federal police code to supersede the police powers of the State.

Mr. ROBISON. Only where the situation is such as to put the republican form of government in jeopardy.

Senator EASTLAND. I said on conditions that I have outlined you think they could do that for larceny or for any other crime where there has been no conviction?

Mr. ROBISON. No. The kind of crime we are discussing here is lynching.

Senator EASTLAND. I understand it is lynching, but if you can for lynching, why can you not do it for other crimes?

Mr. ROBISON. Because lynching jeopardizes the due process of the entire constitutional system of the State. The others do not.

Senator EASTLAND. Lynching is just murder.

Mr. ROBISON. Lynching is not just murder. It is more than murder.

Senator EASTLAND. What is it?

Mr. ROBISON. Lynching includes not only murder, but includes other forms of different physical activity which aims at substituting——

Senator EASTLAND. What?

Mr. ROBISON. They are crimes which are aimed at substituting for the normal processes of the Government the rule of private groups.

Senator FERGUSON. In other words, it sets aside the republican form of government which is due process of law.

Mr. ROBISON. And the mob becomes the court. It becomes mob law, which has no trier.

Senator EASTLAND. That is true of every gang.

Mr. ARENT. That is why my answer to Senator Eastland, I think, would be somewhat different. The republican form of government principle does not deal with the situation where the State authorities are maintaining law and order and presenting honest, good faith cases to the jury.

Senator EASTLAND. What is the difference between this and any other gang killing?

Mr. ARENT. Because in the case of lynching I think there is a historical foundation for a Federal determination that in many instances the State fails to maintain the essential elements of republican form of government in providing a fair trial and protection for those people.

Senator FERGUSON. Have you ever known a gang killing to be, let us say, an attempt to carry out the enforcement of law or punishment?

Senator EASTLAND. Certainly.

Senator FERGUSON. As a rule, gang killing is for other purposes than an attempt to carry out the law.

Senator EASTLAND. That is not the way I read a lot of them.

Senator FERGUSON. You mean that they are trying to punish a man, and that is the reason they kill him in these gang killings?

Senator EASTLAND. Surely.

Senator FERGUSON. You mean punish him because he has committed a crime?

Senator EASTLAND. Surely. Punish him because he is selling liquor in the area of one gang.

Senator FERGUSON. It is not to punish him because he is selling it as a crime. It is because he is taking the business away from them.

Senator EASTLAND. That is true, of course, but one is a crime and the other is a crime. I do not see the difference. Both of them are crimes.

Senator FERGUSON. A lot of these lynchings are tried to be put on the plane that they are doing it to enforce the law.

Senator EASTLAND. I have never known such a thing.

Mr. ROBISON. That is the justification of it.

Senator EASTLAND. I do not think the Senator could say there was ever a lynching that was put on the plane that they were trying to enforce law. Of course, the men know they are not enforcing the law. They are violating the law, not holding themselves up as a court.

Senator FERGUSON. But they do not want to wait until the regular process goes through. They want quick law.

Senator EASTLAND. It is just a case of murder. That is all it is.

Senator FERGUSON. There is not any doubt about it.

Mr. ROBISON. There is no question it is murder.

Senator FERGUSON. It is an exaggerated murder.

Senator EASTLAND. If article 4 of the Constitution applies to lynching, it would apply to any other crime if our Supreme Court is judicially honest, and frankly I think that all these cases must be based upon the assumption that a majority of our court, as now constituted, is not judicially honest and will not determine the law. I think Senator Morse's statement about the changing constitution yesterday was an example of it.

Mr. ARENT. Senator Eastland, I might call your attention to the fact that nearly all the research that has been done in the legislative

history of the fourteenth amendment shows that it was originally intended by a majority of Congress to make that amendment apply to individual violence against a person's civil liberties.

Senator EASTLAND. I do not know about that.

Mr. ARENT. I suggest that Flack's book be read.

Senator EASTLAND. Who is Flack?

Mr. ARENT. He is a rather obscure professor somewhere now, but he did an excellent thesis which is in print in the libraries, analyzing the congressional debates and all the legislative history there.

Senator EASTLAND. What do the courts say? That is the test, as I understand.

Mr. ARENT. This bears upon your last proposition, the civil-rights cases. Congress, in accordance with that understanding, adopted certain civil-rights acts after the adoption of the fourteenth amendment, which made no distinction between State action and individual lawlessness. The Supreme Court in the civil-rights cases and other cases subsequently cut that down very considerably.

Senator EASTLAND. Declared those acts unconstitutional.

Mr. ARENT. When you say the Supreme Court would have to be intellectually dishonest to expand the scope of the Federal jurisdiction, you are raising the question about the honesty of the court.

Senator EASTLAND. If they should follow the precedent.

Mr. ARENT. I think they should examine the question right from the beginning on its legislative history and its constitutional interpretation. We found in the civil-rights section this, that there were a great many fields of Federal activity even within the limitations of the civil-rights case which had been overlooked and ignored.

Senator EASTLAND. What did the court hold in the Slaughterhouse case?

Mr. ARENT. As I recall, that essentially the fourteenth amendment was directed against State interference with civil rights rather than individual.

Senator EASTLAND. Not a violation of individual rights by an individual. That has been adhered to by the court from that time down to this, as a matter of fact?

Mr. ARENT. There have been some situations where individual actions have been protected in fields of rights called Federal rights. The interesting thesis has been advanced that the right to a fair trial in the State court which can be reviewed by the Federal courts under the Federal Constitution is a Federal right, and if that is true, that would be protected against individual violence as well as State violence.

In other words, time and again the Supreme Court reverses a conviction in the State court because the elements of due process have not been observed. If a man is seized from jail and disposed of summarily by a mob, he thereby loses a right to the fair trial in the State courts which the Constitution guarantees him and which the Federal courts have time and again accepted the responsibility to step in to enforce.

Senator EASTLAND. My statement about the Supreme Court was not only based on this, but it was based on the restrictive covenant suit, the Oklahoma case. It is all based on the ground that the court is not judicially honest. That is my judgment. I think that is the assumption that they always go on. Whether they are or not, I have some very strong opinions. I do not know.

Mr. ROBISON. Any action which is taken under color of State authority is action which is subject to the restraints of the Constitution. The language of the civil-rights cases in that respect is quite strong.

It appears at several points in the opinion. There are other decisions of that very period, not by the present Supreme Court, which also make that clear that where the State fails to act, the Federal Government not only can but should act. One such case is *Strauder* v. *West Virginia* (100 U. S. 303).

In any case, I think it is clear that Congress in enacting legislation now, regardless of what it thinks of the Supreme Court, has to recognize the law as established by the Supreme Court. The line of decisions of the Supreme Court both at the time of the civil-rights cases and at the present make it clear that it is the duty of the Federal Government to act now.

Senator EASTLAND. Your statement is that Congress must do what?

Mr. ROBISON. Recognize the law as it is established by the Supreme Court.

Senator EASTLAND. If we did that, then, of course, this bill would be killed here in the committee.

Mr. ROBISON. Oh, no.

Mr. ARENT. We don't admit that. We hold that there is nothing in the existing law which declares the basic principles of the bill unconstitutional.

Senator EASTLAND. You cannot support that statement in the face of the case that he just cited, *Strauder* v. *West Virginia*, and the Slaughterhouse case. If we follow his premise, of course the bill should not get to the floor.

I agree that when the Supreme Court announces the law, we must obey it.

Mr. ARENT. The precise problem has never been directly and completely explored by the Supreme Court, and we think an exploration by this court or its predecessor court or the court succeeding it would probably and very likely sustain the constitutionality of this bill.

I would like to read a proposed additional finding which we would like to recommend for the Morse-Wagner bill——

Senator EASTLAND. Of course, if they sustain the constitutionality, that would not mean in reality it was constitutional.

Mr. ARENT. You are not recognizing the authority of our judicial system, Senator.

Senator EASTLAND. I recognize it. I have my own opinion, of course, but of course I would recognize it. I have not much confidence in the judgment of our Supreme Court. I do not think the bar of this country has.

Mr. ARENT. We suggest an addition to section 1 of Senate bill 1352 as follows:

Subsection (d):

Where a State fails to exercise its police powers in a manner which protects all persons equally without discrimination because of race, creed, color, national origin, ancestry, language, or religion, or permits persons not expressly designated as its agents to punish any person within its jurisdiction for crimes or alleged crimes, without trial or other due process of law, and condones such

conduct by participating in or facilitating such conduct or by failing to punish either those of its officials who permit such conduct or those guilty of the conduct, the State fails to maintain a republican form of government.

Your Honor, I have nothing more to say other than that our organization, which has long been interested in the problems of minorities and the problems of this democratic form of government, in which minority and majority can live together peacefully and safely, believes that a great deal of good can be accomplished by a Federal Antilynching bill.

Senator EASTLAND. Who is it in this country who is not a minority?

Mr. ARENT. Fine. All the more reason, then, for showing the firm stand of this Nation against a form of violence which has been a disgrace to us in the eyes of our own citizens and in the eyes of the world.

I thank you.

Senator EASTLAND. I think time has cured it. We do not have any lynchings now.

Senator FERGUSON. Thank you, gentlemen. We will recess until 10 o'clock on the 27th.

(Thereupon, at 12 noon, the committee was adjourned, to reconvene at 10 a. m. Tuesday, January 27, 1948.)

CRIME OF LYNCHING

MONDAY, FEBRUARY 2, 1948

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 10 a. m., pursuant to recess, in room 424, Senate Office Building, Senator Homer Ferguson (chairman of the subcommittee) presiding.

Present: Senator Ferguson, Revercomb, and Eastland.

Present also: Senator Stennis, Robert B. Young, committee staff.

Senator FERGUSON. The committee will come to order.

We will hear from you first, Senator Stennis.

STATEMENT OF HON. JOHN C. STENNIS, A UNITED STATES SENATOR FROM THE STATE OF MISSISSIPPI

Senator STENNIS. Mr. Chairman and gentlemen of the committee. I appear this morning as a witness. I have a memorandum here, but it is not especially a prepared statement. I have some authorities that I base some of my legal reasoning on, but it is not a brief. And I would like permission to file a brief on these legal questions which I think are very vital.

Senator FERGUSON. How long would you desire to have to file that?

Senator STENNIS. A week?

Senator FERGUSON. The committee is anxious to get to work. If you can make it in less time than that, we would appreciate it.

Senator STENNIS. I will try. It will not be an extensive brief.

I am going to direct my remarks, so far as they pertain to special provisions of the bill, primarily to S. 1352, as I consider it the most far-reaching bill of the three now before you.

I want to emphasize to you, gentlemen, that my appearance here in opposition to these bills is not perfunctory in the least. I have a very firm conviction that bills of this nature are without congressional authority, so far as their enactment is concerned.

I think they are directly an invasion of principles of local and State government, and I believe, with all deference, that they are entirely unconstitutional.

I know the motives and purposes of the authors are very high and are dictated by the highest considerations, but I do not think that that gives authority to the Congress to enact such legislaion.

I look upon the Federal Government as being the creature and upon the individual States as the creator. We have no authority to pass any

law unless there is strong basis for that authority found in the words, or by reasonably necessary implication therefrom, of the clauses of the Constitution.

I do not believe we would have ever had a great government without this separation of powers that I speak of. I do not think the Federal Government would ever have been founded without the separation of powers. And I do not believe that our Government can or will long endure when that division of State and Federal power is ignored.

I therefore strongly feel that I speak for both the Federal and the State Governments when I oppose this measure.

Now, gentlemen, my personal background is along this line, if you will pardon me for the personal remark: I am a lawyer. I have been in the profession for 20 years. I spent 16 years of that time in the courtroom. I served 5 years as a district prosecuting attorney. I served 11 years as a circuit judge. That is the presiding officer of a court of unlimited civil and criminal jurisdiction. It is next to the highest court in the State.

During those 16 years, I had the most intimate and direct and continuous contact with court officials, county officers, jurors, rank-and-file citizens, and those charged with crime, as well as those convicted of crime. I have taken part in the trials of people, as prosecuting attorney, and also presided over trials, that involved the red man, the black man, and the white man.

As I say, I have spent 16 years in that close, intimate contact with the problems and with the affairs of State government. And I believe that for the area that I come from, I do know something about the mind and the attitude of the people toward law, and toward law enforcement.

I had many cases of considerable interest that presented unusual problems, and I have been up the hill and then down the hill many times on all those things.

My deliberate conclusion is the strength of our Government does not rest in Washington. The real spirit of our Government is found throughout the 3,000 or more counties and county courthouses of our great Nation. That is where the people come in contact with their affairs, with their problems, and they try to find the solution. And it is there they feel their personal responsibilities.

I think this law would put all those State laws and municipal laws into more or less of a strait-jacket. I have found that the strongest appeal we have to the individual citizen is an appeal to him to do his part in his local unit of his government.

I believe that when we take this responsibility away from the local citizen and, further, when we seek to brand his community as criminal and impose a penalty thereon because of some crime therein, we are striking at the very vitals and at the very heart and soul of our democracy.

Now, that is what this bill does.

Gentlemen, with all due deference, I was shocked at the reading of that section of this bill that seeks to impose a criminal fine on a political subdivision of a sovereign State of the United States.

Senator FERGUSON. Senator, it has been suggested that, as we have out-of-town witnesses, and because of the session at 12, we might proceed with their testimony and you might hold the remainder of your testimony until after they are through.

Is that all right with you?

Senator STENNIS. That is all right with me.

Senator FERGUSON. Mr. White, will you come forward, please?

You may proceed, Mr. White.

STATEMENT OF WALTER WHITE, EXECUTIVE SECRETARY, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, WASHINGTON, D. C.

Mr. WHITE. Mr. Chairman and gentlemen of the committee, my name is Walter White, and I am secretary of the National Association for the Advancement of Colored People.

I appear here today on behalf of the national office, and the 1,627 branches, youth councils, and college chapters of the association, with a biracial membership of one-half million, in support of S. 1352.

The association has for many years been opposing lynching as a grave danger to the democratic way of life. We have investigated lynchings. I myself have had the experience of investigating some 41 lynchings, and some 12 race riots in the United States, and I have done some writing and speaking on the subject.

We consider lynching to be the most dramatic symptom of a basic societal sickness, but we consider it only one of the serious symptoms of a basic malady. Some of the others are the lynching of the democratic process on the floor of the United States Senate itself by means of filibuster. Another is the disfranchisement of persons because of race or creed or color or economic circumstance, by means of poll tax, by the terriorism of the lynch mob, by the so-called white Democratic primary, which our Supreme Court has recently outlawed.

Another is job discrimination, or economic lynching.

The fourth is educational inequality based on race, or the mob murder of the human mind.

And fifth is the caste system which crucifies the human spirit of an American because he belongs to a different race, or worships his God in a different manner or a different place, or was born through no choice of his own outside of the United States.

We charge that Ku Kluxery has dominated the Congress for generations, but we are glad to see a new climate of public opinion swiftly coming into being against the harm which mob violence does to the democratic way of life.

There is, for example, the report of the President's Committee on Civil Rights which unequivocally recommends the enactment of Federal legislation against lynching.

I would like to read one paragraph, beginning at page 157, which goes as follows:

> The Committee believes that to be effective such a law, namely, an antilynching act, must contain four essential elements: First, it should define lynching broadly. Second, the Federal offense ought to cover participation of Federal officers in

a lynching, or failure by them to use proper measures to protect a person accused of a crime against mob violence. The failure or refusal of public officers to make proper efforts to arrest members of lynch mobs and to bring them to justice should also be specified as an offense.

Action by pivate persons taking the law into their own hands to mete out summary punishment and private vengence upon an accused person, action by either public officers or private persons meting out summary punishment and private vengeance upon a person because of his race, color, creed, or religion—these, too, must be made crimes.

Third, the statute should authorize immediate Federal investigation in lynching cases to discover whether a Federal offense has been committed.

Fourth, adequate and flexible penalties ranging up to a $10,000 fine and a 20-year prison term should be provided.

The constitutionality of some parts of such a statute, particularly those providing for the prosecution of private persons, has been questioned. The Committee believes that there are several constitutional bases upon which such a law might be passed, and that these are sufficiently strong to justify prompt action by the Congress.

That Committee, you will remember, was chairmaned by Charles E. Wilson, president of the General Electric Corp., and it had in its membership distinguished representatives of education, of the law, of labor, of racial and other minority groups, and of the church.

We believe that that recommendation is an exceedingly sound one, which ought seriously to be considered by the Congress.

Now, I would like also to call attention to this new climate of decent public opinion which fortunately is growing in this country and which will back such a measure.

I want to call attention to the attitude of the students of the universities of Oklahoma and of Texas, who have shown in unmistakable fashion that they favor the abolition of discrimination, and they favor the abolition of racial segregation as being in violation of all the tenets to which we give lip service.

And there also is the attitude of the young veterans, many of whom I talked with overseas, when I was there as a war correspondent during the war, who, having fought side by side with men of other races and creeds and colors, have learned to believe in democracy and who believe that it ought to be practiced here at home.

I think it is most notable that in Senator Stennis' State and Senator Eastland's State there have been a number of remarkable instances of this new awareness of the obligations of democracy on the part of young veterans, both white and Negro.

The old order, thank God, is passing. The very violence of some of the threats which have recently been made to secede from the Democratic Party of the Union itself is an omen of their coming defeat and an indication of their present fear that the days of bigotry have passed.

I should like also to urge consideration of S. 1352, the Wagner-Morse-Case bill, because of its international effect.

In north Africa in 1943, I saw leaflets which had been dropped by the Germans among the Arab tribes and among the native Africans, pointing out that there were lynchings and race riots in the United States as proof of the fact that the United States Government was a hypocrite when it said that it was fighting for democracy, while it permitted lynching to continue in the United States.

Later I saw in the Pacific, in Guam, posters which had been then put up all over the island and in other places by the Japanese, calling upon the natives there to drive out the "imperialist, bigoted, prejudiced American white man" and to drive on toward "Asia with Asia's own," in order to drive the white man out of the Pacific.

We think that such racism of that sort on the other side is just as vicious, but no more vicious than the racism which supports lynching and mob violence here in the United States. And we need to wipe out lynching, because, as the United States Army has recently shown, in Armed Forces Talk 210, which is a brief document that I ask the privilege of placing in the record——

Senator FERGUSON. It will be received.

(Armed Forces Talk 210 is in the committee files for scrutiny.)

Mr. WHITE. I want to call particularly your attention to section 6, which is headed "Predjudice Endangers World Peace." [See testimony of Charles Houston.]

Because that kind of thing continuing to happen here in the United States causes the two-thirds of the people of the earth who are not white increasingly to doubt our statements in America, when we say we believe in democracy, in Christianity, and in simple human decency.

We must recognize that the splitting of the atom has ended isolation forever, and that we have got to become the kind of people we say we want to be and the kind of people we say we are; that we do believe in justice, and we practice it toward all, irrespective of race, or creed, or color.

Now, there have been suggestions made to the NAACP that if we will consent to the dropping of the section providing for the punishment of lynchers, the bill can more easily be passed.

I want to say that we totally and unequivocally reject any compromise. Any proposal to eliminate the provision for the punishment of lynchers will make the bill, we believe, weak and ineffective. We would rather have no law at all than an emasculated and ineffective one. Because a weak bill would simply bring as much contempt for the power of the Federal Government as now exists toward the authority and the power of the several State governments.

We further contend that it is ridiculously and viciously misleading to say that the reduction of lynchings makes such a law unnecessary.

I ask permission to place into the record for the information of the committee, first, a statement giving the listing of lynchings and, second, an analysis of not only the lynchings, but the near lynchings which took place during the year 1947.

Senator FERGUSON. They will be inserted at this place in the record.

(The material referred to is as follows:)

Lynchings in the United States, 1921–46, [1] *by States and years*

	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	Total
Alabama	2	3	2		1					4	1		5	2	6		1		1	2							29
Arkansas	6	5	2		1	3	3					1	2		1	1											23
California							1						1	2	2		3	1							1		4
Florida	5	5	7	5	3	9	2		4	1	2	2	2	1	2	1	1	1			1		1	1		4	61
Georgia	14	11	4	2	2	3				7		1	4	1	2	5	1	1	2	2	2	1	2				68
Illinois				1																							2
Indiana																											1
Kansas										2																	2
Kentucky	1			1	1	1			1			1	1	1												1	8
Louisiana	5	5	1	1	1	2	1	2			1		4	2	2			1			1						30
Maryland											1		1														2
Michigan																											3
Mississippi	13	8	5	2	6	4	7	5	2	3	3		2	6	8	1	2	4	1			3		2		1	88
Missouri	1		1	1	1		1	1			1		1		1						1						9
North Carolina	4	2							2	1																	13
North Dakota																											1
New Mexico																											2
Ohio											1		1														7
Oklahoma		2	3			1				1		1				1				1		1					18
South Carolina	5	2		1		3	3			2		1	3		1		1			1				1			19
Tennessee	1	2		1		2	3		1		1		3	1	1		1							1			47
Texas	6	16	2	1		5	1	2	2	4	1	1	1	1	2	1						1					1
Utah																											4
Virginia	1		1		1																						2
West Virginia						1					2																6
Total	64	61	28	16	18	34	21	11	12	25	14	10	28	16	26	12	8	7	4	5	5	6	3	4	1	6	445

[1] Based on supplements to Thirty Years of Lynching in the United States, 1889–1918, NAACP, New York, 1919.

Source: National Association for the Advancement of Colored People, New York 18, N. Y.

DEATHS AND SUSPECTED DEATHS BY LYNCHING, 1947

February 1947, Liberty, S. C.: On February 16, 1947, Willie Earle, Negro truck driver, was removed from Pickens County jail by a mob of more than 30 persons. Two hours later his body, ripped by knives and buckshot, was dumped near a rural slaughterhouse. Earle, an epileptic victim, had been accused of robbing and fatally wounding a Greenville, S. C., cabbie. He was arrested on circumstantial evidence. (Metropolitan press.)

May 1947, Rocky Mount, N. C.: News of what was believed to be another lynching reached Washington, D. C., the week preceding May 28. According to a visitor from Rocky Mount, N. C., the body of Willie Pittman, a Negro taxi driver, was found horribly mutilated on the side of a country road near Rocky Mount. The head was bashed in, the legs and arms cut off, and the body split open. Pittman's taxi was discovered parked in the woods nearby.

June 1947, Atlanta, Ga.: Joe Nathan Roberts, 23, of Philadelphia, Pa., was shot to death by a mob in Sardin, Ga., because he refused to say "Yes, sir," and "No, sir," to white inhabitants there. Roberts was a student at Temple University. The reported lynching was revealed in a letter to Mrs. Evonia Carn, of Philadelphia, from her mother, who lives in Sardin. The parents of Roberts, also residents of Sardin, were spirited out of town. (Released in the Afro-American, June 14, 1947.)

August 1947, Prentiss, Miss.: The body of Versie Johnson, 35, ripped by bullets, was left at the scene of his murder near Prentiss on or about August 1. Johnson was shot dead by police for the alleged rape of a white expectant mother. According to Sheriff G. O. Berry, the prisoner was fired on when he suddenly attacked one of the three patrolmen responsible for his custody. A statement released by the sheriff's clerk indicated that a lynch mob had begun to gather round the jail soon after the prisoner was arrested, and that previous to the slaying members of the mob had given Sheriff Berry an ultimatum to get Johnson's confession by 8 o'clock that evening. Johnson protested his innocence. He reportedly attempted to grab the gun of one of the officers.

Sheriff Berry, State Highway Patrolman J. S. Puckett, and a patrolman named Kapkins were subsequently tried "merely as a formality necessary to clear their names." (AP release, reported in the New York Herald Tribune; also reported in the Negro press.)

December 1947, Lowndesboro, Ala: Elmore Bolling, 30, was found slain the week preceding December 20. His body was riddled by shotgun and pistol shots. More than one were believed, from the body's condition, to have figured in the slaying. Clarke Luckie, white, who alleged that Bolling insulted his wife over the telephone, was released in $2,500 bond. Real motive behind the slaying believed to be the fact that Bolling was too prosperous as a Negro farmer. (Reported by the Negro press, December 20.)

Dunn, N. C.: Charlie (Bud) Smith, 36, was found slain and his companion, Daniel Bassford, who was left for dead, was found to be seriously wounded as the result of mob violence. Governor Cherry, of North Carolina, declared the matter was no mystery, as all parties to the affair were known. None were apprehended. The NAACP asked officials of Lillington and Harnett County to investigate. Local dailies called the incident an "ambush affair."

Carl Cameron, an innocent Negro bystander, was first attacked by the mob, but was released, unharmed. He was arrested and held in jail overnight.

MOB VIOLENCE RESULTING IN PHYSICAL INJURY, 1947

January 1947, Athens, Ga.: Golden Lamar Howard, 19, was beaten by two brothers, Bradley Verner, 36, and Tom Verner, 26, for refusing to divulge the nature of his testimony before a Federal grand jury investigating the Walton County lynchings of July 1946. (NOTE.—In June 1946 Tom Verner was acquitted by a Federal jury and a mistrial was declared for his brother.) (Negro and white press, Jan. 2, 1947.)

February 1947, Collins, Miss.: Lawrence Calvin Jenkins, an honorably discharged Navy veteran of Collins, Miss., was attacked by a group of white men north of town, tied to a tree, and castrated with a razor blade. Untied, he struggled to his home nearby, where his mother found him lying on the porch. He was removed to a hospital in Jackson, Miss.

John Sandiford, sheriff of Covington County, said there was nothing he could do because Jenkins would not name his attackers. one of whom was said to be interested in a Negro girl and resentful of Jenkins' attention to her. The sheriff

found the rope and razor used in the attack after a brief investigation. (Reported to national office by Chicago branch, NAACP. Published in press release under date of February 28)

April 1947, Decatur, Ga.: Aggie Herndon, 46, and wife Lottie, 40, were severely beaten at their home near Lithonia by four unmasked white men who entered on the pretext of searching for stolen articles. The men took the victims into the woods, administered a brutal flogging to the man and shot the woman. Pistol, flashlight, and blackjack were employed. Although De Kalb County police investigated, no subsequent reports were made to the press. (Negro and white press, April 2.)

July 1947: Charleston, S. C.: Three white youths between the ages of 19 and 20 attacked a group of Negro Boy Scout campers at Camp Pinckney, S. C., the week of July 21, shooting and wounding three. They were apprehended.

August 1947, Jefferson, S. C.: Four men were brutally beaten by a white mob, three for no obvious reason of any kind. Names of the victims were withheld for fear of reprisals. The trouble started when a white man attacked one of the four with a tire tool. His victim was arrested and lodged in jail. The victim's father and uncle went to the jail to learn the charges against the youth. The father was set upon by the mob and beaten. His brother received the same treatment.

(Later, the son of another man was met on the highway by the magistrate, according to reports, and was beaten.)

Several persons admitted seeing the Chesterfield County sheriff and the acting chief of police near the scene of the beatings, but the two made no effort to interfere (Afro-American, August 23, 1947).

LYNCHINGS PREVENTED, 1947

February 1947, Osawatomie, Kans.: George Miller, accused of killing the local chief of police, was rescued by sheriff's deputies and State patrolmen from a lynch mob that had already placed a noose around his neck.

Miller is reported to have slain the police chief when the latter attempted to arrest him on a warrant issued through his wife, charging him with beating her (Negro press, February 8).

May 1947, Pell City, Ala.: Robert Hunt, 28, charged with having attacked a pregnant white woman, was saved, May 1, from a mob of 300 by State highway patrolmen who arrived in time to prevent the mob from taking the prisoner from the sheriff.

Hunt was wounded by shots fired into the jail. He was transferred to Birmingham (Negro and white press, May 2, 1947).

Forrest City, Ark.: Willie Lee Duke, 40, was captured by a sheriff's posse and held in an undisclosed jail because of crowds "gathering and talking trouble" in the community, according to Sheriff R. W. West.

Duke was seized in connection with the knife slaying of Mrs. Ethel Ellis Boyd, 35-year-old cab owner and driver (New York Sun, May 23, 1947).

Rich Square, N. C.: Godwin (Buddy) Bush, 24, a Negro prisoner held in Northampton County jail, was seized by a mob at daybreak on May 23. Bush broke away from the mob as they left the jail and dashed across the street. One shot was fired but missed him. He hid in the woods and dense swamp for 2 days and then crept to a farm house and asked for help.

Bush has been arrested in Rich Square and charged with attempted rape of a young white woman. After giving himself up to the FBI, he was placed in their custody (Metropolitan Press, May 23).

June 1947, Lasker, N. C.: Another assault on a white girl by a Negro man was reported on June 1 at Lasker, N. C. Upward of a hundred men, many of them armed, fanned out over the countryside after the girl reported the alleged attack. Two Negroes found within 2 miles of her home were taken into custody and promptly rushed to an undisclosed jail for safekeeping (New York Herald Tribune, June 1, 1947).

Hurtsboro, Ala.: Jimmy Harris, 18, was rescued by the mayor of Hurtsboro, Ala., from a mob that had placed a rope around his neck and stationed the victim under a tree in front of the home of a woman he was accused of attempting to rape.

Harris was first sent to Phoenix City and then to Kilby Prison at Montgomery for safekeeping. Reports conflict and range from being accused of entering the home of the woman to charges of being found in her kitchen with his arms about her (Metropolitan and Negro press, June 11).

Carrollton, Ga.: A mob of 300 masked white men unsuccessfully attempted to storm the Carrollton County jail June 30 and remove Eddie Brown, Jr., 20, accused of murdering a white farmer. Deputy sheriff, local police, and State patrolmen were effective in resisting the mob. Brown was secretly removed from the jail to Fulton Tower in Atlanta by State police (Metropolitan press, July 2, 1947).

July 1947, Knoxville, Tenn.: John Fleming, a Negro, who was seen walking down the street with a white woman, was placed in jail for safekeeping after being rescued from a mob of 150 men by Police Chief Elmer Kykes.

Fleming, 40, suffered the loss of an eyeball and several cuts and bruises (metropolitan and Negro press, July 8).

Windsor, N. C.: An unnamed middle-aged Negro suspect was arrested the week of July 11 and rushed to an undisclosed jail because of rising tension over an alleged attack upon a 55-year-old woman.

Leesburg, Ga : Pfc. Herbert L Archer, Jr , of Newark, N. J., was taken from a train at Albany, Ga., and arrested because he allegedly went to sleep in a lower pullman berth reserved for a white woman

The woman's complaint brought the conductor who suggested hanging Archer beside the track. The complainant intervened for the soldier. Archer was transferred from Albany as rumors spread that he had attempted to assault a white woman. The local sheriff told his father, after a visit to his son, to get to the next town for safety.

Marietta, Ga.: Charles Mozley, 13, escaped, with police assistance, from a mob of about 300 white men armed with shotguns, rifles, pistols, and clubs. It is alleged Mozley attempted to rape a 72-year-old grandmother who was picking berries with her two grandchildren.

Police indicated that the charge against Mozley would be assault with intent to murder (metropolitan and Negro press, July 23).

August 1947, Columbia, N C.: Seven southern-born whites and an American-born Japanese and two Negroes attending a student project were issued an ultimatum by a mob of 250 whites to leave the county within 24 hours for occupying the same residence.

The group had been working for 2 months on a project of building a cooperative store for Negroes in Columbia. The group leader revealed that the real reason behind the threats of violence was resistance by financial interests in the community (Negro press August 30, 1947).

Gadsden, Ala.: A mob of 75 on August 30 unsuccessfully attempted to find and lynch Art Hendricks, 15, accused of criminal attack upon a 41-year-old white woman.

Hendricks was arrested on September 15

October 1947, Perry, Ga.: A mob of 10 (Negroes) demanded the custody of James Davis, a Negro, charged with criminal assault on a 9-year-old girl, July 18 The sheriff refused to surrender the prisoner (Negro press, October 25, 1947).

November 1947, Ellaville, Ga : Sheriff Edgar Duane announced that he had taken precaution to avoid mob violence against five Negroes accused of slaying a local farmer by hurrying the accused to separate undisclosed jails (World Telegram, November 5, 1947).

Kingstreet, S. C.: Sheriff Peerless Lambert blocked attempts of an armed mob to remove prisoner Bennie Collins, held on charges of having raped a 15-year-old girl. Collins was removed elsewhere for his safety, reported in Race Relations, December 1947, January 1948.

November 1947, Danbury, N C.: Officers of Danbury refused, on November 11, to reveal the whereabouts of Harry L. Davis, a Negro who had joined an armed mob combing the hills to seize him.

He was arrested when a neighbor recalled having seen him in the area where an attempt was made to rape a young girl. Davis was taken to Winston-Salem and moved again to an undisclosed jail (metropolitan and Negro press, November 11, 1947).

POLICE BRUTALITY INVOLVING TWO OR MORE OFFICERS

January 1947, Houston, Tex.: Bill Rudd, reporter for the Houston Chronicle, a witness to the following incident, reported:

A man described by the arresting patrolman as "just one of those smart California niggers," was arrested on a charge of "loud talking" and was held for general investigation. Sgt. E. A. Hammett telephoned another officer, "I have a nigger on the way up. He is smart as hell and might give you a little trouble. You might give him a good bouncing."

After booking the prisoner, three officers started down the corridor toward the cells with him. Suddenly one struck him heavily in the back of the neck with his fist. The Negro plunged to the floor All three officers started kicking and stomping him. He was badly beaten.

When Sergent Hammett was informed of the beating, he remarked, "They shouldn't have carried it that far" (Monthly Summary, February 1947).

June 1947, Nashville, Tenn.: Jesse Patton, 18, was beaten by city police in an effort to obtain a confession of robbery and safecracking. The nature of his injuries was submitted to persons investigating this brutality by the physician who treated his wounds (Pittsburgh Courier, June 28).

July 1947, Columbus, Ga.: Sgt. Raphael Showell was viciously assaulted by two Columbus police officers, W. C. Sapp and J. H. Hawkins, because an Army bus, of which Showell was in charge, collided with a civilian car. Showell, declaring himself the officer in charge, was then set upon by the police (Chicago Defender, July 19).

October 1947, Montgomery, Ala.: B. F. Feldey, 65, and his son, Robert, were beaten beyond recognition by C. F. Goolsby and J. R. Ingram on or about October 1. The assault occurred during a trip by the pair to visit Robert's sister, ill in the local hospital. Police stopped the car, ostensibly to search for liquor and guns. The elder Feldey was beaten without restraint. His ribs were broken. Robert's skull was fractured, his arm paralyzed.

Goolsby admitted the incident. Both officers were suspended "for not reporting the incident."

Ingram, a week prior to the incident, beat up James Anderson, a Negro grocery clerk, because Anderson was, according to Ingram, "a smart nigger" (Chicago Defender, Oct. 11, 1947).

November 1947, Slidell, La.: A Negro officer, Lt. Edward De Vaughn, and a sergeant were ordered out of a public pay station at gunpoint by a plain-clothes policeman, and were later overtaken on the road by two plain-clothes men. They were forced from their jeep, arrested, beaten, and jailed without medical aid.

Although charges of "insulting an officer" were lodged against the pair, the soldiers were subsequently released when arresting officers failed to prefer charges. Both victims were hospitalized following their release (Monthly Summary, December 1947–January 1948).

Louisville, Ky.: Patrolman John R. Womack and a fellow officer entered a confectionery, accused George E. Kelly, a Negro, of creating disturbance, beat him unconscious when he attempted to knock a gun out of Womack's hand, and riddled his body with bullets as he lay senseless on the floor.

Local police termed the shooting necessary, although both the proprietor and other witnesses testified that Kelly had been model and discreet in his deportment (Monthly Summary, December 1947–January 1948).

PROPERTY DAMAGED THROUGH MOB VIOLENCE

March 1947: Atlanta, Ga.: The home of Rev. A. C. Epps, a Negro minister, was dynamited and partially destroyed as a result of terrorism by whites opposed to the presence of the newly moved Epps family into the neighborhood.

Mrs. Epps reported that prior to the dynamiting, 10 white men had visited her and warned the family to move. Two other houses in the same vicinity were damaged by bombs the same week (Monthly Summary, April 1947).

July 1947, Atlanta, Ga.: The unoccupied home of Nish Williams, Negro, was bombed for the second time on or about July 12. Considerable damage was done to the structure. Neighbors reported seeing a white man toss a missile into the structure shortly before the blast occurred. No arrests were made although the same parties suspected in half a dozen similar bombings are believed to be guilty (Negro press, July 19, 1947).

August 1947, Birmingham, Ala.: The newly acquired dwelling of Samuel Matthews, a Negro miner, and his wife was dynamited by white terrorists. The blast caused the rear section of the building to collapse and tore off the front. At least six sticks of dynamite were used.

The home was unoccupied by the Matthews who had been reluctant to move in for fear of reprisals. They and others had received cross-bone threat notices (Negro press, Aug. 30, 1947).

October 1947, Miami, Fla.: Mr. and Mrs. Ezekiel Woodard and their family barely escaped with their lives when their dual family dwelling was burned to the ground by terrorists. The area was one recently opened to Negroes. Two

5-gallon containers filled with gasoline were found on the premises by investigators.

The Woodards were among scores of Negro families recently evicted from the Railroad Shop Addition to make room for a new school for white children (Negro press, Oct. 25, 1947).

October 1947, Atlanta, Ga.: An unsuccessful attempt was made to destroy the home of Mr. and Mrs. Oliver L. Cantrell with a home-made bomb containing 5 pounds of dynamite and nitro glycerine. The missile failed to explode. The bomb was taken to police headquarters where it was decapped.

Atlanta, Ga.: The home of Clifford L. Walton, 43, and his family was set afire by a group of white men who resented the entrance of the family into a so-called white residential area. No arrests were made.

Patrolman R. R. Bibb and his partner H. W. Bates, who were in front of the house when the fire started, stated that a white man inquired how long the officers planned to remain and declared that families in the area resented the Negroes' presence. "You may not want to stick around and see what will take place," he concluded. Shortly thereafter, the rear of the house burst into flames. (National and Negro Press, Oct. 24, 1947).

Chicago's race clashes

During the summer months of June, July, and August, Chicago experienced the worst wave of race voilence since its memorable riot a generation ago. The mayor's committee on human rights cites records of 25 cases of vandalism and arson against Negroes including loss of 10 lives by fire. Disturbance was instigated by white residents in efforts to dislodge Negroes from newly acquired homes in so-called white neighborhoods.

On June 5, approximately 500 whites gathered in front of a three-story building on Chicago's Southside in protest demonstration after a Negro family moved into a first floor flat. Before police squads arrived and dispersed the crowd, several members of the mob threw stones at the building, breaking several windows. Three who defied police were arrested. The building is located in an area bound by restrictive-covenant agreements signed by members of the Park Manor Improvement Association. The association filed an injunction suit to remove the Negroes.

Early in July a mob of more than 2,000 whites milled about and threatened violence and property damage to the newly purchased home of Cleo Byrd, Sr. The outburst was an effort to intimidate Byrd, who acquired the property in violation of a restrictive-covenant agreement.

Within the week, Mayor Martin Kennelly met with a representative group of citizens to discuss the issue of violence against Negro home seekers. The group called the mayor's attention to the then 19 cases of attacks against Negroes. Additional police protection was promised.

The following month white terrorists continued a 5-day demonstration over the presence of Negro veterans in the Fernwood veterans' housing project. Disorders first broke out after 8 Negro veterans and their families moved into the project along with 63 white veteran families. A crowd of 2,000 sought to storm the housing area. Four police were injured. Angered over failure to gain entrance to the project, the mob swept into adjoining streets and began stoning passing automobiles driven by Negroes. In three nights more than 100 cars had windshields and windows broken and damaged fenders and bodies. Some 50 Negro men and women were treated at various hospitals for injuries.

INDIVIDUAL VIOLENCE AGAINST NEGROES INDICATIVE OF LYNCH SPIRIT

April 1947, Smithfield, N. C.: Fletcher Melvin, 24, a Negro orderly at Provident Hospital, Baltimore, was shot and instantly killed by train conductor, C. A. James, while en route to his native home in Dunn, N. C. According to Negro fellow-passengers, Melvin was asleep when James gave general orders for all Negroes to occupy the "Jim Crow" coach. James stated that when awakened Melvin objected to the order. He stated that the shooting was in self-defense.

It was not made clear why 8 or 10 railway employees on the Atlantic Coast Line train were not called upon to assist in subduing Melvin, if he had actually been disorderly. The conductor could not explain why he had failed to call upon the police in either Rocky Mount or Wilson, two large towns through which the train passed during the period (Negro press, Apr. 19, 1947).

June 1947, La Grange, Ga.: Henry Gilbert, a 42-year-old farmer of Troup County, was reported slain by Police Chief Buchan of Hamilton, Ga., in Harris

County jail early in June. Police had accused Gilbert of aiding the escape of Gus Davidson, charged with killing a white mill owner.

Investigation by Dan Duke, former State attorney general revealed that murder taking on the aspect of lynching had occurred (Negro press, June 14, 1947).

Atlanta, Ga.: Mrs. Lucy Pyron, 50, a passenger on a crowded streetcar was shot by a white man in a streetcar fracas on June 14. The dispute arose over occupancy of segregated seats. Mrs. Pyron was a bystander.

July 1947, Covington, Tenn.: James Wade, 38, the father of eight was slain by City Marshall Jim Scott. His bullet-riddled body was found near the scene of the slaying. Wade was charged with meeting a white woman. His wife claims he had only purchased some second-hand furniture from her.

Los Angeles, Calif.: Adolphus J. Burley, a veteran, was beaten by a white policeman participating in a road block. While waiting, Burley and his companion, turned on the car radio and laughed at some of the jokes they heard. The officer, nearby, wanted to know what was funny. When Burley explained, he called him a liar, ordered him off the road, assaulted him and put him in a patrol car where he again assaulted him—Burley was beaten unconscious (Negro press, July 19, 1947).

August 1947, New York, N. Y.: Francis Le Maire, a New York Policeman, critically wounded Curtis Jones, a 29-year-old Negro and disabled veteran. Jones objected to Le Maire's language in telling him to move on. Le Maire attacked Jones with a nightstick. When Jones lifted his arms to protect his bleeding head, Le Maire shot him three times (metropolitan and Negro press).

October 1947, Newark, N. J.: The home of Robert Andrews was entered by a band of whites on August 23. Approximately 70 men stormed Andrews' apartment, damaging property and threatening the occupants. The daughter of the leader had reported to her father that three Negro youths had hit her over the eye (Negro press, Oct. 13).

Chicago, Ill.: Cleotho Macon, a veteran, was beaten by Police Lt. Edward Barry in a tavern on October 2. Barry is reported to have been drunk and willfully beat Macon (Negro press, Oct. 18).

November 1947, St. Louis, Mo.: Patrolman Henry Reed shot and killed Henry Black, an elderly Negro, whom he had taken into custody on suspicion of theft. Reports state that the victim was halted in the street by the officer and questioned concerning a rug he was carrying. Black was then put under arrest, as his explanation seemed unsatisfactory, but broke free and ran as the officer was leading him toward a police call box. Patrolman Reed testified that he fired two warning shots, followed by a third, which wounded Black fatally in the head. A coroner's jury returned a verdict of "justifiable homicide." The NAACP is preparing Black's case for the grand jury. (Monthly Summary, December 1947–January 1948).

The Anguilla, Ga., prison-camp massacre

On July 11 the Associated Press reported that five Negro convicts had been shot to death and eight others wounded, two critically, in an escape attempt at a Georgia State highway camp, according to information released by Warden W. G. Worthy. He gave this account:

A group of new prisoners joined the camp yesterday and were sent out to work on the Jesup Highway. The new men refused to work and were brought back to camp about 4 p. m. They would not get out of the trucks when ordered and Worthy called the county police. Chief of Police Russell B. Henderson, of Glynn County, talked to the prisoners and told them to do what the warden ordered and "cut out that foolishnes." The men left the trucks and were lined up in the prison enclosure. When the police chief finished his talk they broke, ran to the barracks, and dove under the building. Others crawled and ran toward the fence enclosure. Officers then opened fire with shotgun and rifles. Five were killed and eight wounded. Fourteen came back and surrendered.

NAACP investigators were rushed to the death camp immediately following the shooting. They worked quietly to assemble the actual facts leading up to the mass murder and uncovered several details of a sensational nature. A summary of their report includes the following:

Six Negro prisoners were killed outright and seven seriously wounded. There was no sit-down strike as originally reported. The men simply refused to go into a rattlesnake-infested swamp without boots. They demanded a meeting with the warden where they could explain their objections, but this demand was refused by the armed guards who were in charge of the work gang. When the men refused to enter the swamp they were told to sit in the road while one of the guards returned to the camp to report the situation to the warden. Only two guards remained with the men who were perfectly aware of the fact that there were 15 heavily armed guards back at the camp. It was pointed out to the investigators by one of the prisoners that if an escape had been contemplated it would have been more feasible with only two guards over them than later, when they'd been returned to camp in trucks, under the guns of 17 guards.

The trucks carrying the prisoners back to camp were followed by the warden, who requested county police who were met on the road to follow the caravan.

The Negro prisoners were unloaded in front of the barracks where the warden ordered five prisoners to "step out." This the men refused to do when it was obvious to the tightly packed group that the warden was reeling drunk The warden then ordered Pee Wee Willie Bell to step out "because I'm going to kill you." When bell refused this order the warden sent for some pick handles. A few minutes later the intoxicated warden spoke to County Police Chief Henderson, who got into his car and drove to Brunswick, 16 miles away, returning with a submachine gun. During all of this time the prisoners made no attempts to escape.

When the police chief returned with the machine gun, the warden reeled into the packed prisoners holding his pistol with both hands to get Pee Wee. A few minutes later the shooting began. The survivors insisted that the police took part in the shooting. This has been denied by the police. One investigator was certain that the machine gun had been used against the helpless prisoners.

Published reports reaching the outside world from the death camp gave a considerably different picture from the NAACP findings. One of the first versions appeared in a local paper where it was reported * * * "When Warden H. G. Worthy of State Highway Camp No. 18 strode into a group of unruly Negro convicts at about 4:30 o'clock yesterday afternoon, Willie Bell, a longtimer and reported troublemaker lunged at him. The warden shot Bell with his pistol and immediately half a dozen other armed prison guards opened fire on the convicts with shotguns and pistols.

"A few seconds later the firing had ceased and five of the colored convicts lay dead, eight others were wounded, one dying during the night at the city hospital. Bell received only a minor wound in the leg.

"Witnesses said at the first shot by Warden Worthy, the prisoners broke in all directions, men scrambled under the nearby bunkhouse. Three of the dead Negroes lay where they fell in front of the bunkhouse. Another was killed under the house and had to be dragged out, and the fifth managed to crawl under the house to a 10-foot wire fence on the other side. He was shot climbing the fence and fell dead on the outside.

"The wounded lay where they fell, some under the bunkhouse building, others sprawled in front of it. Fourteen of the group of 27 prisoners in the group were not hit by the bullets and crouched or lay still on the ground as guards rounded them up and herded them into the bunkhouse."

Although the Anguilla camp was ordered closed by Georgia's State Board of Corrections, and an investigation into the responsibility of prison officials was made, none were apprehended.

(Prepared by Julia E. Baxter from materials made available to the Division of Research and Information, NAACP.)

Mr. WHITE. I will not take the time of the committee, because this is an analysis of all these lynchings and near-lynchings, and is somewhat voluminous.

Senator FERGUSON. That covers what period?

Mr. WHITE. It covers the period of the year 1947. I want to show the immediacy of the situation.

Senator FERGUSON. We have it up through 1946, I believe.

Mr. WHITE. Yes; through 1946—it is already in the record.

We believe that there are various reasons why an antilynching bill and a strong and unemasculated one is as necessary now as it was during the days when there were more than 200 lynchings per year.

For one thing, the reason for the reduction is primarily one of fear, fear of the Federal Government. Second, the growing climate of public opinion, North and South as well, has caused lynchings to go

underground, as the testimony which I have just put into the record will indicate.

Third, we need a bill, because lynchers are bullies and cowards. They are bullies like the brutish moron who swaggers around threatening to knock the "block" off of any other man who incurs his displeasure. The bully may seldom have to use his threats, but there is the ever-present threat of committing murder or mayhem, which is virtually as effective as the actual knocking of a man's "block" off until a policeman comes along to restrain the bully.

And then there is the situation which we face if the present spiral of inflation continues to grow and there comes a depression, with competition for jobs. That, we fear, may result in a recurrence of mob violence, and we need Federal legislation to supplement that of the States, and to step in and act if and when the States refuse, fail, or neglect to take action.

Finally, I want to point out that there is hysterical fear in certain quarters in the United States today of communism. I charge bluntly today that the most dangerous destroyer of faith in the democratic process in the United States is not the Communist, but the Eastlands, the Rankins, the Bilbos, and the Talmadges, who cast discredit upon our Supreme Court and who advocate mob violence.

I charge also that those who wittingly or stupidly finance and support the racism of such demagogues are doing more harm to the United States than all the foreign agents who may possibly be at work in the United States.

Finally, I want to say that it is imperative that decent America—and I believe that the overwhelming majority of Americans are decent—must create the machinery now, through antilynching and other legislation, to smash bigotry once and for all.

I want to say also, in conclusion, that I believe that lynching is only part of the picture. I believe it is imperative that the rules of the United States Senate be amended so as to prevent the recurrence of filibusters—which is merely denying to the majority the right to vote up or down any measure which is before it.

I believe it is necessary for the Congress to pass fair-employment-practice legislation, in order to end economic and job discrimination.

I believe it is necessary for the Congress to pass legislation to outlaw the poll tax, which denies a right to vote not only to 4,000,000 Negroes but 6,000,000 whites in the Southern States.

I believe it is imperative that we do the whole job by giving Federal aids to education and to health, particularly in the South, from which I come, where poverty couses not only Negroes but whites as well to suffer from inadequate educational and health facilities.

I believe that if the Congress, the Eightieth Congress, takes such forthright action as that, we can thereby end bigotry in the United States and create a climate of decent opinion which will enable us to live together as Americans and as decent human beings.

In conclusion, Mr. Chairman, I would like, if it meets with the approval of the committee, to submit the analyses of four lynchings, showing the economic, the political, and the social factors involved; and finally, the recent Gallup poll, showing that 69 percent of the people of the country favor Federal legislation; and that of the South, 56 percent of the Southerners polled favor the passage of Federal anti-

lynching legislation, with only 35 opposed and only 9 expressing no opinion.

Senator FERGUSON. They will be inserted at this place in the record.

(The material referred to is as follows:)

[From the Congressional Record—Appendix, July 8, 1947]

ANTILYNCHING BILL

Extension of remarks of Hon. Clifford P. Case, of New Jersey, in the House of Representatives, Tuesday, July 8, 1947

Mr. CASE of New Jersey. Mr. Speaker, under leave granted me to extend my remarks in the Record, I include herewith the following report of the Gallup poll on the antilynching bill which was published in the July 2, 1947, issue of the Washington Post:

"THE GALLUP POLL—ANTILYNCHING LAW FAVORED BY MAJORITY IN SOUTH, NATION

"(By George Gallup, director, American Institute of Public Opinion)

"PRINCETON, N. J., July 1.—In the wake of the Greenville, S. C., lynching trial, public sentiment throughout the country endorses the idea of a Federal antilynching law, judging by the results of an institute poll.

"A majority of the voters polled in the 13 Southern States say they would approve having the Federal Government step in and take action if local authorities fail to deal justly with a lynching.

"To measure the general public attitude toward the principle of Federal action, the institute questioned a true cross section of voters in all the 48 States on the following:

"At present, State governments deal with most crimes committed in their own State. In the case of a lynching, do you think the United States Government should have the right to step in and deal with the crime if the State government doesn't deal with it justly?

"The vote:

	Percent
"Yes	69
No	20
No opinion	11

"Voters polled in the South showed a smaller vote in favor, as follows:

"Southern voters:	*Percent*
Yes	56
No	35
No opinion	9

"The majority of voters feel that a Federal antilynch statute would serve to discourage lynchings and thus reduce their number. This belief is shown in response to a second question:

"Do you think this would reduce the number of lynchings in the United States or would it make little difference?

	Percent
"Would reduce	60
Little difference	24
No opinion	16

"In the South, however, opinion is more closely divided about the effectiveness of a Federal law in reducing lynching.

"Southern voters:	*Percent*
Would reduce	48
Little difference	37
No opinion	15

"In a companion poll, the institute sounded the reactions of all sections, including the South, to the recent Greenville lynch case, in which a group of 31 defendants accused of lynching a Negro were acquitted.

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"It was found that three out of every four voters had heard or read of the Greenville affair. When asked their opinion of the outcome of the case, voters in the South and in the rest of the country expressed disapproval of the acquittal verdict.

	All voters	South only
	Percent	*Percent*
Disapprove of verdict	70	62
Indifferent	3	2
Approve of verdict	12	21
No opinion	15	15

STATEMENT OF FACTS IN THE BROWNSVILLE, TENN., CASE

The Brownsville, Tenn., NAACP was organized June 12, 1939, and was very active, though small, for almost a year. It appears that a part of its program was to urge Negroes to register and vote in the national elections of 1940.

On May 6, 1940, Rev. Buster Walker, president of the branch, together with Messrs. Taylor Newburn and Elisha Davis, members of the executive committee, and Messrs. John Lester and John Gaines, members of the branch, went in a body to the office of County Registrar Mann to register that they might vote in the Presidential election. Mann referred the group to City Judge Pearson, who, in turn, referred them to Jonas Steinberger, chairman of the elections committee. Since Steinberger was out of the city at the time, and having learned that the registration booths would not be open until August, the Negroes let the matter rest for the time being.

Nevertheless, the following day, Deputy Sheriff Bolden told Reverend Walker that "he would drop encouraging Negroes to vote or there would be trouble." Two weeks later Strauss Drumwright, an unemployed white, went to Elisha Davis' filling station and told Davis that he had heard that he was a member of some organization getting Negroes to vote and warned him to "let the thing drop or Negroes will get into serious trouble." Drumwright further told Davis that "the people down at the courthouse say they will run you and Walker out of town if you try to vote."

The activity of the members of the local branch created a reaction on the part of whites of the town resembling that of a mob spirit, which reached its height by the running of Reverend Walker and Elisha Davis out of town, under intimidating circumstances, and by the lynching of Elbert Williams, a member of the local branch.

Reverend Walker was warned on June 14. On June 22 he was forced to leave the town. In the interim, the whites began to inquire concerning the holding of meetings by the branch officials and threatened to break up all meetings in a rough way. News was received by the whites that the branch had had a meeting. Several men were questioned about the nature of the meeting that was supposed to have been held. Threats then became rather general. The Negroes went to the mayor of the town, who advised them that though they had the right to vote, he could not handle "those rednecks." That night a mob formed at the courthouse and went to Reverend Walker's market looking for him. Friends warned Walker, and one Professor Outlaw drove Walker out of the town. Outlaw had to leave town because he extended Walker this courtesy.

On July 9 Mrs. Newburn, secretary of the branch, reported that all officers of the branch had gone, that some were forced to leave and that others had fled in fear of bodily harm.

Elisha Davis was not as fortunate as Walker, Outlaw, Newburn, and other officers of the branch. On the night of June 16 he was forced by a mob to leave home. He was taken to the river and questioned by the mob as to the purpose of the NAACP. He was forced to give names of members under threat of death. He was then told to leave the county.

Members of the mob that forced Davis to leave the county the night he was seized from his home were: Tip Hunter, Brownsville night marshal and nominee for sheriff; Charles Reed, night policeman; Clyde Hopkins, highway commissioner of Haywood County; Albert Mann, farm foreman for Dan Shaw, president of the Brownsville Bank; P. G. Fairy, truck driver; Elliot Hays, grocer; Shorty Smity, WPA worker; Will Mann, farmer; Albert Dixon, mule trader; and a truck driver for the Gulf Refining Co., whose name was not known. Albert Mann was charged with being chief spokesman.

Davis' business was seized by whites, who used his equipment and refused to pay Davis for the property being used or for the use of the same. Davis' family later joined him in Michigan.

Shortly after Elisha Davis was run out of town, his brother Thomas and Elbert Williams were taken to the city hall to be questioned concerning meetings. Thomas Davis was not harmed, according to reports, but considered it best to leave town. Elbert Williams, according to city officials, was questioned and released. Officials had inquired into an NAACP meeting in an adjacent town.

According to the widow of Elbert Williams, on the night of June 20 a city police officer, Tip Hunter, went to their home and demanded that Williams accompany him. Hunter had other white men waiting in the car. One was identified as Ed Lee. From the city hall Williams was apparently taken to the river. His widow asserted that she inquired concerning his whereabouts the next day and the officer in charge of the jail, one Hawkins, told her "they" weren't going to hurt him; just wanted to ask a few questions. Hawkins told Mrs. Williams to come back in a day or two if her husband had not returned.

On June 23 Williams' body was found in the Hatchee River by fishermen. It had been badly beaten and bruised, with holes in the chest. Mrs. Williams soon after left the city.

A special grand jury investigated but was unable to return an indictment. As late as August 1940 reports show that Negroes of Brownville were being threatened by local whites.

On June 24, 1940, a conference was had with officials of the Department of Justice in Washington relative to the case of Reverend Walker. Mr. Walter White, executive secretary of the national office, NAACP, presented the findings of a personal investigation made by him, but no positive action beyond that of making investigations resulted from efforts of the Department of Justice.

The Governor of the State of Tennessee was asked to protect the Negroes of Brownville. He replied he had reported all information to the proper State authorities. No positive action was taken by them.

Reports received by the NAACP showed that Negroes did not register in Brownville for the presidential election. "Before this is through, the river will be full of niggers," one white resident remarked.

Despite the efforts of the NAACP and civic-minded individuals, the Department of Justice closed its case files on Brownville in January 1942. No Federal, State, or county investigation resulted in bringing any member of the mob perpetrating this intimidation to justice.

INVESTIGATION INTO THE LYNCHING OF WILLIE VINSON AT TEXARKANA, TEX., ON JULY 13, 1942

Willie Vinson, a 25-year-old Negro of Texarkana, Tex., was dragged from his bed in a hospital basement by a group of reportedly unarmed and unmasked men, according to the local sheriff, and was hanged to the winch of a nearby cotton gin.

It is an established fact that Vinson was only suspected of attack and was never accused. The woman who made the charge that a Negro had attacked her in the local community "thought Vinson looked like the man."

Although there was never any evidence of Vinson's guilt, William B. Brown, then mayor of Texarkana, in a letter to a local Negro churchman spoke of the lynch victim's guilt as if the fact had been established. "If the criminal had not violated the law in the first place there would have been no lynching." Brown then explained to his correspondent: "There are two laws in Texas * * * the law of the land which prescribes death in the electric chair and also the law of the mob which prescribes the same penalty in a more or less unorthodox manner." He continued: "The criminal, Willie Vinson, knew this, yet with his heart set on hellish mischief, planned his crime and proceeded to attempt to put it into execution, wagering his life and liberty on beating both the law and the mob."

"* * * The citizens of Texas do not tolerate this crime [sic, rape], and like in Vinson's case, that stands for a necktie party or worse when these criminal activities break out."

(Source: Letters and affidavits dated July and August 1942, contained in the files of the NAACP national office.)

Investigation Into the Lynching of Charlie Lang and Ernest Green at Quitman, Miss., October 12, 1942

Charlie Lang and Ernest Green, approximately 14 years of age, were accused of attempted rape, consisting of efforts to entice a young white girl under a bridge. According to Sheriff Lloyd McNeal, both got a "fair and square" hearing before the local peace justices. The boys were taken from jail by a local lynching mob and hanged from the bridge which was reported to have been the scene of the crime.

An NAACP investigator visited Quitman and learned through inquiry that the young girl, the purported victim of the attempted rape, had long been a playmate of Lang and Green and was accustomed frequently to chase and play with them in local surroundings. On the particular day in question the young girl was seen to have run from the vicinity of the bridge. On being questioned, she suggested their attempt to rape.

A well-known New York reporter visited Quitman in an attempt to sound out the temper of community reaction to the lynching. His questions were directed to Sheriff Lloyd McNeal:

"Question. How do the town people feel about the lynching?

"Answer. We are all for law and order here; but, of course, we got some good folks who get kind of wild. Them niggers is getting uppity, you know.

"Question. Do you think if the FBI turned up some evidence, or maybe you did, you could get a grand jury to indict and a jury to convict?

"Answer. That's a tough question. I really wouldn't know. Feelin' runs high against niggers sometimes.

"Question. Have you any idea what can be done to prevent things like this in the future?

"Answer. Why, no; I don't think I have."

Investigation Into the Lynching of Howard Wash, Near Laurel, Miss., On October 17, 1942

Howard Wash, a Negro 49 years of age, was hanged from a bridge near Laurel, Miss., a community of about 20,000 inhabitants. Charged with the murder of his employer, Wash had been found guilty and because the jury was split in its decision was given a life sentence. On the eve of the day he was to have been sentenced a lynch mob removed him from the jail and carried him to the isolated bridge. His abduction was carried out at a time when local residents were returning from work. Several members of the mob were known and recognized. Four or five arrests were made by State guards but all persons were released.

The same New York reporter investigating the lynching at Quitman, Miss., reported his attempt to secure some information concerning circumstances leading up to the murder of Howard Wash. He interviewed a responsible businessman of the community who told him that the lynching was assuredly an outrage. He remarked, however, that "niggers" have been giving Laurel a good deal of trouble lately. What with young men folk of the town off to war and none left to protect the women, whites are getting extremely worried. "We got to keep niggers in their place," he said.

Investigation Into the Lynching of Robert Hall at Newton, Baker County, Ga., January 30, 1943

Sheriff Claude Screws, official of Baker County, Ga., announced on February 8 that Robert Hall, a Negro, had died at Putney Hospital in Albany, Ga., on January 30. His death resulted from his attempt to take the life of the sheriff making it necessary for Screws to use physical force to protect himself. Screws stated that he had been given a warrant to charge Hall with the theft of a tire. On the night in question he had come with a local police officer, Frank Jones, to make the arrest.

Hall's death was caused by 21 burns and body concussions and by a fracture of the skull according to the white physician who attended him.

Hall's widow testified to the NAACP that Frank Jones, of Newton, had aroused Hall at midnight on January 30. Hall was ordered to dress and accompany

Jones, who maintained he carried with him a warrant for theft of tires from George C. Durm and John C. Durm. Hall was handcuffed, his shotgun was removed from his home, and he was placed in an auto occupied by Screws. All drove off in the direction of the jail.

The following morning Mrs. Hall and her father-in-law visited the jail to inquire about her husband's safety. She was told that he was in a hospital in Albany. On arrival in that community she learned that his body had been taken to an undertaking establishment. She found that her husband had been severely beaten, although at the time he left home he was in excellent physical condition.

Hall's father testified that both Durms stated upon inquiry that they had lost no tires nor had they sworn out any warrants for Hall's arrest.

(Source: Letters and affidavits dated July and August 1942 contained in the files of the NAACP national office.)

Investigation Into the Lynching of Cellos Harrison at Marianna, Fla., June 16, 1943

The facts in the case are these: Cellos Harrison was accused along with several others of the murder of one Johnny Mayo on February 5, 1940. Harrison was released without charge and remained in Marianna 15 months, working directly across the street from the Jackson County Courthouse. Soon after the election of a new sheriff, Harrison was rearrested, a confession was reportedly obtained.

The decision of the court was appealed to the Florida Supreme Court and was reversed. A new trial was ordered. Again Harrison was convicted and sentenced to die, and again his case sent to the supreme court. This time the conviction was upheld. With the assistance of a new attorney this case was reargued. The Florida Supreme Court set aside the conviction on the ground that the confession was not valid, having been obtained by means of intimidation. The court ruled that Harrison was not to be retried. Five days after his release a grand jury was reconvened and indicted Harrison, setting a trial for June 21. On June 16, at a time when his attorney appealed to the Florida Supreme Court for writ of prohibition and habeas corpus, Harrison was taken from the jail and lynched.

(Source: Letters and affidavits dated July and August 1942 contained in the files of the NAACP national office.)

Investigation Into the Lynching of Rev. Isaac Simmons at Liberty, Miss., on March 26, 1944

This report, consisting of an affidavit signed by Eldrich Simmons, sworn to in New Orleans on August 1, 1944, is summarized below:

Eldrich Simmons, 48 years of age, the son of the late Isaac Simmons, of Liberty, Miss., reported that until March 29, 1944, he and his family resided on their family farm at Amite County, Miss. The farm was owned by his father, who had inherited it, debt free, from his own parents. Eldrich Simmons reported that the entire family lived on this farm without trouble until 1941. At this time his father learned of the possibility of oil on the land. He went to Jackson, Miss., and hired a lawyer to straighten out the matter of property rights. The elder Simmons intended that the property should be legally inherited by his children after his death.

During February of 1944, Reverend Simmons was warned not to remove timber from the land by two whites interested in possessing the property. He consulted his lawyer.

Between 11 and 12 noon on March 26, a mob of white men, including those interested in securing Reverend Simmons' property, rode up to the home of his son. He was enticed into the car with the statement that the men were interested in tracking down the exact location of property lines. Eldrich was beaten and cursed. The mob drove to the home of his father and abducted the minister. Father and son were taken to an isolated country spot, where the elder Simmons was slain. Eldrich was released. An inquest was held and a verdict given that Reverend Simmons had met his death at the hands of parties unknown. Eldrich was whisked to Magnolia, Miss., for safekeeping.

Investigation Into the Lynching of Jesse James Payne at Madison, Fla., on October 10, 1945

According to Associated Press reports, Sheriff Lonnie Davis stated at Madison, Fla., on October 11 that Jesse James Payne, a Negro under indictment for assault with intent to rape a 5-year-old white girl, had been taken from an unguarded Madison County jail and shot to death on October 10.

Sworn testimony and information obtained through the office of the attorney general of the State of Florida convinced the NAACP that motive for the lynching of Jesse Payne had been willfully withheld from the public. The facts as they are contained in our files are these:

Prior to July 1, 1945, Payne together with his wife, his mother and his sister worked on the farm of D. L. Godwin, of Madison County, Fla. Payne was running what is known as a half crop for Mr. Godwin. The planting consisted of 1½ acres of tobacco, 5 acres each of peanuts and watermelons, 10 acres of corn, and one-half acre of okra. On June 23 Jesse Payne approached Godwin and requested an advance in money to meet the personal needs of his wife and baby. Godwin refused. Payne threatened to turn his part of his crops over to the Government as he was urgently in need of funds.

On Sunday, July 1, Payne together with his family and a friend were visiting neighbors dwelling on a nearby farm. This farm was owned by Arch Davis, the father-in-law of Payne's landlord and the father of the local sheriff. Early that evening Godwin and his two sons drove up to Davis' farm and called for Payne. Drawing a gun Godwin forced the Negro into his car. His family did not learn of his whereabouts for many days.

During the period in which Payne was lost to his family his mother and sister were threatened and assaulted in an attempt to make them reveal his whereabouts Mobs began gathering.

Payne's family finally located him at Raiford, Fla. Payne revealed that Godwin and his sons had taken him to an isolated spot and revealed their intention of lynching him for Payne's threat to ask a Government advance. Godwin is reported by Payne's mother and his wife to have stated to Payne: "I am going to teach you how to put the Government on my land." Payne revealed Godwin's fear of exposure in view of the fact that Godwin had planted more tobacco than was allotted to him under Government agreement. Tobacco had also been planted by Sheriff Davis. Payne was seriously wounded in escaping from the Godwins. He was rescued by a State highway patrolman who took him to Raiford and placed him in jail for safekeeping. Godwin did not release Payne's share of money for crop production

Approximately 3 months later Payne was brought to Madison County jail. On the second day following he was removed from the county prison and lynched.

The attorney general of Florida investigated the murder. In a report to Gov. Millard E. Caldwell he stated: "It is my opinion that there is sufficient evidence to justify a conclusion that the sheriff did not exercise that degree of precaution and care that he should have in seeing that the Negro was protected from what happened to him."

Investigation Into the Lynching of Cleo Wright at Sikeston, Mo., January 23, 1942

This report is based on the findings of special NAACP investigators who spoke with community residents, planters, large landowners, a director of a Sikeston bank, the head of a large milling company, FSA officials, and leading Negroes in Sunset Additions, the Negro quarter.

THE LYNCHING

Cleo Wright was lynched on January 23, 1942, by an organized mob that took him from the city hall. Wright was dying of wounds inflicted the night before by a local policeman. Evidence revealed that Wright, after breaking and entering the home of the wife of a serviceman, dangerously slashed the woman and stabbed the officer who arrested him in his flight. It was held to be true that Wright was well known to the woman, and that he had correspondence on his person from her at the time he was arrested However, the association between Wright and his victim was never clearly established.

Wright was first treated at a local hospital for wounds, then taken home. At 4 a. m on the day of his death an ambulance arrived to return him to the hospital. It drove instead to the city hall.

All during Sunday morning groups drifted quietly into town, clustering around the city hall. As tension reached its peak about high noon, the groups merged and as a single mob seized Wright from the building. There was no evidence to show that he had had police protection at any time. The dying man was tied to a car and dragged to the Negro section He was dumped within a few feet of two Negro churches and the Negro public school, soaked in gasoline, set afire, and burned alive.

COMMUNITY REACTION—WHITE RESIDENTS

On January 29 the National Association for the Advancement of Colored People sent two special investigators to Sikeston to determine the trend of community reaction and uncover facts relative to background conditions.

They found that sentiment among white residents followed traditional patterns:

The prosecuting attorney declared he could not persuade the mob to abandon its purpose. He did not wish the patrolman to shoot into the crowd, for fear of bodily harm to those comprising it No tear gas was available. He and the highway patrolman assigned to the district, as a precaution against race riot, preceded the mob into the Negro quarter. Both warned all Negroes to remain inside their homes.

The prosecuting attorney did not feel that Federal antilynching legislation would help.

The lynch party was made up of clerks, truck drivers, laborers, unemployed, and "all not asleep or in church, including the upper classes."

White residents were divided over the ethics of lynch action. A majority felt that the lynching was justified. They all revealed that the lynchers would not be ostracized, nor would any implicating testimony be offered. A local planter of sizable wealth and the head of one of the large milling companies there both approved the ideal of a Federal antilynching law. They said that their friends would probably feel different.

Inhabitants felt that they were thoroughly familiar with the nature of the Negro problem and noted that lately Negroes in the community had become increasingly "cocky." They pointed, in example, to a local Negro drug-store clerk who had recently been whisked out of town by his employer. That boy "was just looking for a lynching." He had taken the initiative of opening conversations while serving white customers.

Upper class inhabitants told of tension between white and Negro labor. "If they can't feel superior to the Negro, what would they feel superior about?"

Employers resented increasing union activity among Negroes. Black labor, they held was becoming less subservient as labor shortages increased.

All resented FSA efforts to establish a Negro housing settlement in what they termed the "middle of the white community."

None felt that killing a Negro bore relationship to murder because "the Negro is closer to brute than to an independent human individual with human rights."

COMMUNITY REACTION—NEGRO RESIDENTS

Responsible Negro leadership reported that Negroes in Sunset Additions were not in sympathy with the crime committed by Cleo Wright. Wright was reported to have had a criminal record, and worked as a transient cotton picker. He owned no property.

All held his lynching was another effort to stigmatize and intimidate the Negro in Sikeston.

Many were attending church at the time the lynching occurred. Consequently they were familiar with the mob's activity which took place nearby. They stated:

1. That the participants were unmasked.
2. That no force was used by the chief of police or any other police, or by the highway patrolman
3. That no arrests were made nor license plates noted although both the prosecuting attorney and the State patrol had ample opportunity.
4. The prosecuting attorney failed to direct the sheriff or other police officers to arrest parties participating in the lynching.

After the lynching, Negroes were advised to stay inside as whites planned to invade their community. They refused to respect this admonition and attended church and civic meetings where they planned methods of protection.

They organized squads and canvassed homes for guns and ammunition. The Governor of Missouri was called by phone. One of their leading ministers was spirited out of town when word was passed down that local officials were familiar with his efforts to solicit State aid and were planning reprisal.

Most of the Negro section is owned by Negroes. A steady exodus from this area disrupted business and commerce. Shops, churches, and schools closed. Whites with Negro servants and employees hastily arranged to have them sent elsewhere. Within a week the community had ceased to function as a social unit. The assistance of the NAACP was requested to hasten a return to normalcy.

LOCAL PRESS REACTION

The Sikeston Herald, speaking editorially January 29, 1942, remarked that the entire white community was guilty of deceiving Negroes in the belief that the two races can mix socially. Although it was also guilty of not enforcing a city council's zoning ordinance (unconstitutional), the Herald did not feel that the community was guilty of mob violence. The fault, it pointed out, rested with the local police in refusing to keep temporarily unbridled passions in check.

The Sikeston Standard, in its letters-to-the-editor columns on January 30, published an anonymous letter calling for official action to—

1. Keep all Negroes off the streets after dark and issue passes through the police department for those who must use the streets at night.
2. Segregate the living quarters of Negroes.
3. Provide whites with adequate police protection.

The "pole-cat editor" of the Standard declared that the lynching would teach Negroes to be good, or leave the community, or expect the same treatment.

The Enterprise Courier of Charleston, Mo., the only paper to comprehend any aspect of the total situation remarked editorially on January 29, 1942:

1. That whites and Negroes alike must clean up backyards.
2. That whites must stop frequenting the Negro community and stop preferring Negro women to their own.
3. That the policy racket owned by whites for the exploitation of Negroes must be discontinued.
4. That Negroes must clean up their own community, discourage liquor-drinking parties and evict "bad actors."

ECONOMIC BACKGROUND

Intimidation of Negroes in Sikeston and its environs was an economic necessity of the moment, our investigators reported. In southeastern Missouri, Negroes are employed only as cotton pickers. "Negroes have always been beasts of burden in southeast Missouri" and since it is important to the economic set-up that they remain in this status, they are not encouraged to develop.

With the aid of labor unions and a gradual growing political consciousness the Negroes have made gains in independence. The feeling that they "should be put back in their places where they belong" was shared by a majority of employers.

Land in five southeastern Missouri counties was river waste until bought by a few far-sighted persons for small price several years ago. Cleared, drained, made productive, it created much wealth for a few people. Seventy-five percent of the land of Pemiscot County, as of 1942, was owned by only 35 persons.

The country is feudal in many respects. After 1924 and the invasion of the boll weevil in the deeper South, cotton became the principal crop. Ten thousand Negroes were imported. While vast fortunes were piled up by a few, the gross income of Negroes and whites remained low. Prior to the war, white sharecropper families averaged yearly an income of $415, while white farm labor families averaged $264. Negroes of all tenure groups averaged only $251 per year per family.

One well-known planter remarked: "We are like the South; still we are different. Our landowners are not as sophisticated, and our labor is not held down by traditions as in the deep South. So the problems of feudalism come to the surface and break out here more than they do in the South. It is a sore spot of change and upheaval. This lynching is only one incident. We are not through with our troubles yet."

FEDERAL ACTION

A Federal grand jury, sitting at St. Louis, Mo., on July 30, handed up a special report on the Sikeston lynching case, describing the occurrence as a "shameful outrage" and censuring the Sikeston police force for having "failed completely to cope with the situation."

The report stated that the grand jury sought to determine whether any Federal statutes had been violated, but "with great reluctance, has come to the conclusion that the facts disclosed do not constitute any Federal offense."

Mr. WHITE. Thank you, sir.

Senator FERGUSON. Are there any questions?

Senator Revercomb?

Senator REVERCOMB. Mr. Chairman, this is a very able presentation of a viewpoint, ably presented. It is regrettable, however, that the witness in presenting it, whatever his feeling might be, would make any personal attack on a Member of the Congress, particularly upon a member of the committee.

I make that comment for the record.

Senator STENNIS. Mr. Chairman, am I permitted to say a word on that?

Senator FERGUSON. Yes, sir.

Senator STENNIS. I was going to say, Mr. Chairman, that I do not know what the practice is here, but I personally object and officially resent the remarks of this witness directed toward Senator Eastland.

Senator EASTLAND. What was the remark?

Senator STENNIS. He called you a demagogue.

Senator EASTLAND. That is absolutely all right.

Senator STENNIS. Senator Eastland is a member of this committee and a Member of the Senate, and the senior Senator from the State of Mississippi.

Senator EASTLAND. Some people might think so. But it is absolutely all right. I do not want to carry on any controversy with a nigger.

Senator STENNIS. Mr. Chairman, may I ask a question here?

He used the word "secede," and referred to recent messages from the South threatening secession.

I do not know what he meant by that, but Governor Wright did not advocate or say anything about seceding from the Union, or anything close to that. Governor Wright is fighting for what he and the people of Mississippi believe is best and necessary for the citizens of Mississippi, both groups, both races. He has not said anything about seceding from the Union.

I appreciate your letting me make that statement.

Senator FERGUSON. Are there any other questions?

That is all, then, Mr. White.

Mr. WHITE. Yes, sir.

(The prepared statement of Mr. White is as follows:)

TESTIMONY OF WALTER WHITE, EXECUTIVE SECRETARY OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE BEFORE THE SENATE SUBCOMMITTEE ON ANTILYNCHING LEGISLATION

The National Association for the Advancement of Colored People was founded in 1909 by a group of courageous men and women outspoken in the hope that mob and lynch terrorism can be destroyed. Many of you here recall the Springfield, Ill., race riot of 1908, the issue which prompted their determined to act. Six persons were needlessly slain and many needlessly wounded. The Springfield inci-

dent was an interim event in the whole grim, tragic history of lynching. It is a sad commentary that for 115 years the crime of mob violence has existed as a constant threat to the orderly process of government in our country.

Since 1921 when NAACP representatives first testified to the need for Federal antilynching statutes, we have consistently urged passage of strong Federal safeguards. We have not been alone in our appeal. Other persons and other organizations, kindred in belief, have made similar representations. The United Nations in writing its Charter recognized the dangers implicit when governments deny to citizens protection of fundamental human rights. On October 28, 1947, the President's Committee on Civil Rights, ably headed by Charles E. Wilson, issued its report. It identified lynching as one of the most serious threats to the civil rights of present-day Americans. It recommended enactment by Congress of Federal statutes guaranteeing for all the basic right to safety and security of person.

Endorsements such as these do not result from isolated thinking. For more than a decade majority public opinion has approved passage of adequate national antilynching statutes. In 1937, 72 percent, in 1940, 59 percent, in 1946, 69 percent, favored adoption.

The NAACP believes the crime of lynching is a national concern I wish to summarize the substance of our 40 years' experience in investigating the countless lynchings in which our assistance has been sought.

During this time it has noted a gradual statistical decline in deaths from mob violence. This is all to the good. Threat of the passage of Federal legislation and education of the public to the stigma of lynching must be credited for these results. It has noted also the creation of new techniques by which those who rule through terror accomplish their purpose. No longer are lynching parties advertised in the press. Nor do hundreds participate in holiday pastime as heretofore. No pictures are circulated, no souvenirs distributed. We say that lynching "has gone underground." Today's victim is murdered in some isolated spot at the hands of a select, secret few.

Over this same period we find, however, that motivation, excuse, nature, and result of lynch cases remain static. These fundamental characteristics cannot be changed until our cultural patterns of segregation and discrimination are abandoned.

Most, but not all (93.5 percent) of lynch murders reported since 1921 have taken place in Southern or Border States. Most (91.5 percent) of the victims have been Negroes. As Negroes represent only 10 percent of the total population of the United States, death by mob violence assumes definite antiracial proportions.

Reports to the NAACP indicated that no less than 31 persons suffered severe physical inury as the result of mob violence during 1947. Of this number seven met death by mass slaying in a Georgia prison camp, one at the hands of a lynch mob and six under circumstances indicating lynching the most probable cause. In 17 instances lynchings were prevented only through the diligence of private citizens and civil officers, or through the alertness of the intended victims. Police brutality involving two or more officers was reported in at least six States. Mobs damaged the property and threatened the lives of Negro home owners in Alabama, Georgia, Florida, and Illinois. During the summer months Chicago experienced the worst wave of race violence since its memorable riot. Its mayor's committee on human rights cites records of 25 cases of vandalism and arson against Negroes including the loss of 10 lives by fire. All in all, more than 42 separate cases of mob terrorism were recorded. More than 100 Negroes were victimized.

I am submitting for examination by this committee case studies of nine typical lynchings. These have all occurred within the last 7 years. The studies give credence to our contention that the roots of lynching lie deep in economic and emotional insecurity, setting class against class, destroying labor unity, encouraging migration and diminishing the equitable utilization of human resources. This has been true since 1830 when mob violence first became an instrument of public policy and action. As you recall, those were the days when Abolitionists began striking at the whole vast interest of slave property. When you begin to comprehend that the South has never freed itself from its patterns of economic feudal control, you begin to grasp the basic reason for the persistence of lynching as an institution to this day. It is this institution which destroys free competition and obstructs realization of stabilizing our national commerce.

Apologists of lynching maintain (1) that Negroes always attack white women; (2) that lynch victims are generally guilty; (3) that lynching is necessary because of the slowness of judicial procedure. The truth is exactly the reverse. Although southern courts have shown themselves ineffective in dealing with lynchers, their record for charging and punishing Negroes remains uncontested. For practically all types of crimes Negroes are convicted more frequently than whites and sentenced more severely.

Statistics indicate that less than 20 percent of the victims lynched since 1921 were alleged to have attacked white women. While 102 victims (23 percent) reportedly committed murder, 66 (14.9 percent) were charged with offenses ranging from political activity and union participation to talking disrespectfully to white people. And 51, or 11.5 percent, were either wrong victims or accused of no crime at all.

In the past 26 years 72 percent of the persons lynched were neither formally charged nor arrested. The overwhelming majority of the remainder were never brought to trial If the safeguard of a fair trial is to remain the cornerstone of our judicial system, a distinction must always exist between those who are guilty and those whom mobs would make guilty.

Public allegiance to "white supremacy" law in Southern States becomes the lyncher's birthright. Mob terrorists know (1) that only a small segment, the community press and clergy, publicly condemn lynch violence; (2) that landowners sanction intimidation of Negro labor; (3) that peace officers are often reluctant to protect Negroes who cannot elect them; (4) that local law-enforcement agencies are ill-equipped to investigate lynch murder; (5) that local jurymen who are their relatives or friends seldom permit the clear intention of the law to alter their prejudiced opinions.

Traditional resentment to "outside interference" impedes remedial action by State or Federal officers. Where community sentiment is opposed to lynching, mobs can be politically influential enough to thwart investigations. Experience has taught that State laws against lynchers are usually ineffective even when prosecution by officials is vigorous and unbiased.

The lynching of Willie Earle on February 16, 1947, is fresh in the minds of all of us. The trial of his self-confessed slayers was without precedent in the history of the United States court cases. The verdict was not. Less than 1 percent of the lynchers indicted and tried in State courts have been convicted for their crimes.

What happened to the perpetrators of the lynchings of 1946? Let's check the record for facts:

Lexington, Miss.: Five men were indicated for the lynch murder on July 24 of Leon McAtee, who had been falsely accused of stealing a saddle. The defendants admitted they had brutally beaten McAtee but were absolved of any connection with his death.

Minden, La.: Albert Harris and John C. Jones were arrested on July 31 by Deputy Sheriff Charles Edwards for allegedly entering a white woman's yard. No charges were filed against the pair. Nine days later the two were released and seized by more than a dozen men who awaited them outside the jail. Jones' body was mangled with a meat cleaver and his hands severed from his wrists. His face was burned by a blow torch so hot that his eyes popped from his head. Harris, fortunately left for dead, lived to escape and identify his abductors.

The chief of police, two deputy sheriffs, and two private citizens were indicted and brought to trial. Not one was convicted.

Monroe, Ga.: Rewards exceeding $50,000 were posted for information leading to the apprehension of the lynch murderers of Roger Malcolm and George Dorsey and their wives near Monroe, Ga., on July 25. Walton County's Sheriff E. S. Gordon sent out a call for State assistance. "I don't have the right facilities. We feel that they are better qualified to handle this case than we are," he said.

Maj. William E. Spence, head of Georgia's Bureau of Investigation, took personal charge. "We can't cope with the local situation," he stated. "The best people in town won't talk about this. When I get back to Atlanta, I'm going to ask the Governor to appeal to every Congressman to help pass Federal legislation against mob violence."

Simultaneously President Harry S. Truman instructed the Department of Justice to "proceed with all of its resources" to ascertain if any Federal statutes could be applied to secure the apprehension and prosecution of the criminals. Not one was found.

So Georgia's lynchers, known to State and Federal authorities alike, walk the streets unabashed and unashamed. One Monroe patriarch explained it thus:

"You got to understand the niggers is the most brutish people they is. They're African savages and you got to keep 'em down."

Opponents of Federal antilynching legislation traditionally maintain that the problem of lynching must be left to the States. Unfortunately it has been. A minimum of 4,982 mob murders since 1882 is the single result. Since 1921 when the possibility of Federal legislation first threatened the sanctity of "States' rights" a record of 407 Negro persons and 40 white persons have been lynched.

Insistence upon State relief overlooks the essential character of the lynching problem. Victims of mob violence do not get the same protection, either through prevention or through punishment, as do victims of other forms of crime. State and county officials neither attempt to prevent nor punish for this crime as they do for other crimes. In other words, the victim of a lynch mob does not get that equal protection of the State's laws that is his constitutional right.

Lynching is always premeditated. Consequently it is one of the few crimes that can be prevented if precautionary measures are taken. Two strong Federal antilynching measures, S. 1352 and H. R. 3488, were introduced in both Houses of Congress last year. Sponsored by Senators Robert Wagner (Democrat, New York) and Wayne B. Morse (Republican, Oregon) and Representative Clifford P. Case (Republican, New Jersey), the bills represent a bipartisan attempt to tackle this national problem. Narrow interpretation by the courts and definitive congressional action, have, over a period of years, emasculated the effectiveness of the fourteenth amendment. The Wagner-Morse-Case bills restore and resecure its equal-protection clause as a Federal guaranty. We believe that these, and these alone, can bring relief effective enough to materially reduce incentives to lynch violence. The President's Committee on Civil Rights, in issuing its report, underscored every major proposal outlined in the projected Wagner-Morse-Case legislation as necessary machinery for control. For many years the NAACP has looked forward hopefully to the introduction in Congress of measures so vigorous as these. In the absence of statutes outlawing unfair-employment practices and poll taxes, until segregation and inequality is banned in the armed forces, in schools and in place of public accommodation, Congress must direct its energies to the passage or antilynching legislation strong enough to cope with the situation that has been created. It is better that we have no statute whatsoever than that we be given one so weak as to discredit further law enforcement.

Few will be naive enough to expect S. 1352 and H. R. 3488 to lead to the apprehension and punishment of all guilty of the crime of lynching. But it is altogether realistic and reasonable to expect that every effort will be made by those in authority to enforce the orderly processes of Government against mob assault.

First. The general record of Federal courts and law enforcement officials is good.

Second. Judges and prosecutors can be brought from other States or sections of the country. They are not responsible to any local electorate and can be expected to conduct trials free from community prejudices and pressures.

Third. Juries can be impaneled from larger geographic areas and not necessarily from the immediate community as happens under State procedure.

Fourth. Opportunity for the selection of Negro jurors will be greatly increased.

The effectiveness of the county-liability provisions included in H. R. 3488 and S. 1352 have been tested and proved by the States themselves. In no county where similar stipulations actually have been enforced under State laws have lynchings recurred.

Consistent agitation for enactment of Federal legislation over the past generation has already served as a powerful deterrent to mob violence. Many mobs bent on lynching have been stopped by threat of Federal action. On the basis of reaction alone, it is logical to assume that the present bills will be substantially impressive.

Lynching today threatens the peaceful existence of the United States in a world where two-thirds of the population is colored. The London Sunday Pictorial, commented last year that Monroe's quadruple lynching "may well make arguable the competence of the United States to offer tuition in democracy to other nations."

Sooner or later we must face the facts. Reports of lynch violence in the foreign press are creating distrust and disrupting hope for international understanding.

On July 28, 1945, when our Senate signed the United Nations Charter it committed the Nation, under article 55, to promote: "Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

This is a treaty agreement which, by virtue of constitutional authority, takes precedence over any legislated statutes which negate the intention of the covenant. The Wagner-Morse-Case bills acknowledge this international pact. They establish the right of every United States citizen to freedom from lynching. They define treaty obligations under the UN Charter. They define offenses against the law of nations.

The crime of lynching is a crime against humanity. It robs men of the dignity that is their common birthright. It debases our status as a Nation and exposes us to contempt from other countries. Lynchers inflict punishment that is degrading and brutal. But lynching is more than murder. It is the symbolic act which exploits thousands of American citizens and prevents their competing freely for the decent wages, homes, and other forms of security which are their rightful inheritance under a democratic form of government.

Senator FERGUSON. The next witness is Mr. Fraenkel, of the American Civil Liberties Union.

You may proceed, Mr. Fraenkel.

STATEMENT OF OSMOND K. FRAENKEL, REPRESENTING AMERICAN CIVIL LIBERTIES UNION, NEW YORK, N. Y.

Mr. FRAENKEL. My name is Osmond K. Fraenkel, and I am here on behalf of the American Civil Liberties Union.

The American Civil Liberties Union has long advocated passage by Congress of effective legislation to lessen the likelihood of lynching, to punish persons involved in lynchings, and to give injured persons or their families adequate redress.

In our opinion these objectives are best accomplished by S. 1352, introduced by Senator Wagner for himself and Senator Morse, now pending before this committee. I shall confine myself, in this discussion to the constitutionality of the main features of the bill.

I suppose that since the decision of *Screws* v. *United States* (325 U. S. 91), there can be no serious doubt about the power of Congress to punish State officials who, in the course of the performance of their duties, cause injury to persons in their custody, whether or not the acts done or omitted by the State officers were permitted by State law. I shall not further discuss this aspect of S. 1352. I shall deal primarily with the power of Congress to punish individuals who are not State officers.

Section 5 punishes any member of a lynch mob, and section 4 defines a lynch mob to be an assemblage of two or more persons who commit or attempt to commit an act of violence on any person in a discriminatory manner or so as to prevent his proper legal trial for an offense of which he may be suspected or charged. It will thus be seen that the two sections taken together would reach private individuals who so act as to bring about either a denial of equal protection or a denial of due process.

It has been suggested that Congress has no power to reach private individuals since the fourteenth amendment prohibits only State action and not individual action. The *Civil Rights cases* (109 U. S. 23), are generally cited as authority for this proposition. I believe that despite this and other cases Congress has power to deal with private individuals whenever in its opinion it is necessary to do so in order to safeguard a right guaranteed by the Federal Constitution. It has long been settled that Congress may punish private individuals who interfere with Federal elections—*Ex parte Yarborough* (110 U. S. 651).

Congress also has the power to protect persons who enter public land (*United States* v. *Waddell*, 112 U. S. 76); to protect persons from violence while in the custody of a Federal official (*Logan* v. *United States*, 144 U. S. 263), and protect a person who gives information concerning a Federal offense (*Motes* v. *United States*, 178 U. S. 418).

It was held many years ago that when private individuals, by a lynching, deprived a person charged with crime of his right to a trial, they had violated his constitutional right to due process and could be prosecuted under section 51 of the Federal civil rights law. That case was *Ex parte Higgins*, 134 Federal 400, decided in 1904 by Judge Jones.

Senator REVERCOMB. May I interrupt at that point?

Mr. FRAENKEL. Yes.

Senator REVERCOMB. What was the nature of that case? I am trying to get at this: Is there anything in the civil rights law that could be used today as the basis of a bill upon this subject, or would you say that the present civil rights law referred to here might cover the crime of lynching?

Mr. FRAENKEL. The present civil rights law might cover the crime of lynching. There are, as I have mentioned further in my memorandum, two reasons why in our judgment it is not adequate.

In the first place the punishment under the Federal civil rights law is not, we believe, severe enough to be meted out in a case of lynching; while perhaps severe enough to deal with other infringements of civil rights.

In the second place, under the Supreme Court's interpretation in the Screws case, in order to prevent the civil rights law from attack on the ground of vagueness, it is necessary to find that the act was willfully done. And, as we point out, that had the result of securing an acquittal in the trial in the Screws case.

Senator FERGUSON. Would not all lynching be willful?

Mr. FRAENKEL. Oh, I would suppose so. And the minority in the Screws case could see no reason for the reversal of the conviction in that case. Because the act there done was clearly a willful act. Yet the majority of the court felt otherwise. And when we are dealing with matters so sensitive, where the balance is a five to four decision of the court, we thought that a precise definition of the crime would remove all of that penumbra of doubt.

Therefore, while it is possible, by an interpretation of section 51, to reach the conclusion that lynching is included, a separate statement by the Congress, specifically reaching lynching, would remove all of those arguments which were addressed to section 51 on the ground of its vagueness or generality; whereas, the constitutional basis for the argument would, of course, be the same.

In other words, if section 51 can be interpreted to meet lynching, it must still meet constitutional attack, which is being directed against the bills now before this committee.

Senator FERGUSON. How do you account for the fact that the Attorney General and his aides throughout the country have never used this in a lynching case?

Mr. FRAENKEL. It has been used, but has been used seldom. It has been used in this case I cited.

Senator FERGUSON. Was that a regular lynching case?

Mr. FRAENKEL. Yes.

Senator FERGUSON. Where was it located?

Mr. FRAENKEL. In Alabama. It has been used seldom, but it has been attempted once or twice.

Senator REVERCOMB. Which case is this?

Mr. FRAENKEL. The Riggins case, 134 Federal 400, decided by Judge Jones. That was a straight lynching case.

Senator REVERCOMB. Now, my question right there is this: In that case was the point involved of reaching the lynchers?

Mr. FRAENKEL. Oh, yes; those were the only ones involved.

Senator FERGUSON. Was it not the State officials that were the actual perpetrators of the crime?

Mr. FRAENKEL. No, sir. It was attacked as being unconstitutional; and in habeas corpus proceedings, Judge Jones held that the indictment was good, and an appeal was taken to the United States Supreme Court. It was dismissed in the Supreme Court.

Senator REVERCOMB. The appeal was dismissed?

Mr. FRAENKEL. Yes; it was dismissed on the ground that the point should have been raised by motion to quash the indictment. Therefore habeas corpus was an improper proceeding, and the Supreme Court would have none of it.

Senator FERGUSON. In other words, it should have been certiorari.

Mr. FRAENKEL. No; the Supreme Court said, "We are not going to pass on the merits of the question because the basis of the entire procedure below was incorrect."

In other words, the Court had no jurisdiction to consider this question.

Senator REVERCOMB. The appeal was premature?

Mr. FRAENKEL. No; it wasn't that the appeal was premature. It was the matter of jurisdiction in the court below. The court had no jurisdiction to consider it.

Now, why the appeal was dismissed——

Senator FERGUSON. That is what I am getting at. That the lower proceedings should have been certiorari.

Mr. FRAENKEL. The lower proceedings should have been a motion to dismiss the indictment. You see, what happened here was that a man was indicted for being a lyncher. Instead of pursuing the ordinary practice of moving to dismiss the indictment on the ground that there was no statute that could constitutionally punish that crime, he sued on a writ of habeas corpus. The Supreme Court said that was an improper remedy.

Senator REVERCOMB. The appeal that got to the Supreme Court was a habeas corpus proceeding, and the Supreme Court dismissed the habeas corpus proceeding on the ground that it was an improper remedy?

Mr. FRAENKEL. That is right; and they should go back and take up the subject on a motion to dismiss the indictment.

Senator FERGUSON. What happened to the case?

Mr. FRAENKEL. That doesn't appear. They may have been acquitted. I don't know. The case doesn't again come into the reports.

Senator FERGUSON. Well, do you know of any search ever having been made to see what did happen to that?

Mr. FRAENKEL. I don't know. Mr. Carr, who is the executive secretary of the present Civil Rights Committee, discusses that case in his

book. And he could find no record of it further. He says nothing further appears to have happened.

Senator FERGUSON. Then how could you cite that case for an authority?

Mr. FRAENKEL. Because that is a reasoned opinion by a judge, and it is an opinion which is worthy of study. It is not an opinion, of course, which has been approved by the United States Supreme Court; although I may say it has several times been cited by the United States Supreme Court on other aspects, which were discussed.

Judge Jones, in his opinion, for instance, points out that the right to counsel was an essential of due process, long before that subject had been discussed by the Supreme Court itself. And when the Supreme Court came to discussing that, in the Scottsboro case, and others, it several times cited this decision of Judge Jones; which is at least some indication that the Supreme Court considers this decision as of some value, although the Supreme Court has never had occasion to meet the problem involved head-on.

Senator REVERCOMB. Mr. Chairman, let me ask the witness this question:

Who is judge Jones? Is he a district judge?

Mr. FRAENKEL. He was a Federal judge in Alabama.

Senator REVERCOMB. And he held that an indictment under the Federal civil rights law against persons engaged in a lynching, was good.

Mr. FRAENKEL. That is right.

Senator REVERCOMB. Now, if it was good, and so held by Judge Jones, certainly a trial must have resulted. Did Judge Jones give a written opinion on the soundness of the indictment?

Mr. FRAENKEL. Oh, yes. I was about to quote from that opinion.

Senator REVERCOMB. Now, that is established in law: that one may, under this code, be indicted for the crime of lynching.

Mr. FRAENKEL. Well, there is one case. But, of course, one case doesn't make a history.

Senator REVERCOMB. No, but if it is the only precedent we have, it is the law.

Senator EASTLAND. That was a district court opinion.

Senator REVERCOMB. Whether it is a district court, or a Supreme Court, it is still the law.

Senator EASTLAND. But it is not the law.

Senator REVERCOMB. I think it is if it is the only law you have upon it. It is a court of record, and a court of recorded opinions.

Senator EASTLAND. It is a law court.

Senator REVERCOMB. It is still the opinion of a judge.

Senator FERGUSON. It is the law until reversed.

Mr. FRAENKEL. Now, I have given two quotations from that in my statement, which I don't think I will take the time of the committee to read, unless you would like me to.

Senator REVERCOMB. I would like to have that, because it is bearing directly on the point here.

Mr. FRAENKEL. I say I quote "portions" of his opinion, the whole of which merits careful reading and study:

* * * When a private individual takes a person charged with crime from the custody of the State authorities to prevent the State from affording him due process of law, and puts him to death to punish the crime and to prevent

the enjoyment of such right, it is violent usurpation and exercise, in the particular case, of the very function which the Constitution of the United States itself, under this clause, directs the State to perform in the interest of the citizen. Such lawlessness differs from ordinary kidnaping and murder, in that the dominant intent and actual result is usurpation and exercise by private individuals of the sovereign functions of administering justice and punishing crime, in order to defeat the performance of duties required of the State by the supreme law of the land. The inevitable effect of such lawlessness is not merely to prevent the State from performing its duty, but to deprive the accused of all enjoyment, or opportunity of enjoyment, of rights which this clause of the Constitution intended to work out for him by the actual performance by the State of all the things included in affording due process of law, which enjoyment can be worked out in no other way in his individual case. Such lawlessness defeats the performance of the State's duty, and the opportunity of the citizen to have the benefit of it, quite as effectually and far more frequently than vicious laws, or the partiality or the inefficiency of State officers in the discharge of their constitutional duty. It is a great, notorious, and growing evil, which directly attacks the purpose which the Constitution of the United States had in view when it enjoined the duty upon the State (pp. 409–410).

And, further along:

Is it not clear that private individuals who overpower State officers, when they are endeavoring to protect a prisoner accused of crime, whom they have confined to the end that both he and the State may exercise their respective functions and rights before a judicial tribunal, and wrest the prisoner from their custody, and then murder him to punish him for the crime, do, in the constitutional sense, as well as in every other sense, deprive the prisoner of the enjoyment of due process at the hands of the State, and prevent the State from affording it? (p. 417).

Senator FERGUSON. I will ask the clerk to try to follow that through the Attorney General's office and see what happened to that case.

Senator EASTLAND. We have already, if I understand your argument, an antilynching law. But the punishment is not sufficient, is that it?

Mr. FRAENKEL. In part. It may be suggested that if the foregoing is a correct statement of the law, there is no need for a separate bill making members of a lynch mob criminally responsible.

There are two answers to this suggestion.

In the first place, Senator Wagner's bill greatly increases the punishment and makes it more consistent with the serious character of the particular offense of lynching.

In the second place, a specific definition of the Federal rights involved, avoids the difficulties which the Supreme Court in the Screws case found under both sections 51 and 52, because of their generality of description. This produced a dissent in the Court, three of the judges being of the opinion that on account of the generality of the statute was too vague to be enforced at all. It also resulted in the holding by the Court that in order to obtain a conviction under the existing law it is necessary to establish affirmatively that the act was willfully done, a ruling which resulted in the acquittal of the defendant on the retrial of the Screws case itself. The specific reference to physical violence contained in Senator Wagner's bill removes any possible objection on the score of vagueness.

Senator REVERCOMB. Just at that point: What was the basis of proceeding in the Screws case? Was that a lynching case?

Mr. FRAENKEL. No. The Screws case was a case of a State officer who, having a prisoner in his custody violently assaulted him. I think the prisoner died in consequence. It was argued on behalf of the

officer that that was not action under color of State law, because the officer was venting some private grudge and was not authorized by the State law so to maltreat a prisoner.

Senator REVERCOMB. It was outside his capacity as an officer?

Mr. FRAENKEL. Yes. The Supreme Court overruled that contention. It was then also argued that the law was so vague—because it merely said, "Any right guaranteed by the Constitution or laws of the United States," without specifically listing particular rights. And there, the majority of the Court came to the conclusion that the law would be bad unless there was a charge of specific willfullness, and they got into a lot of philosophical arguments, from which some of the judges dissented.

Senator REVERCOMB. Which is the older case? The Screws case?

Mr. FRAENKEL. The Screws case is a very recent case (325 U. S. —).

Senator REVERCOMB. The Screws case did not attempt to take into consideration the reasoning of Judge Jones in the other case?

Mr. FRAENKEL. No. In the Screws case it was a State officer, and the contention was that he was acting under color of a State law. There was no necessity of discussing the problem involved in the earlier case. And no such case has, in fact, reached the Supreme Court in recent years.

Now, it will undoubtedly be urged that the contrary to the ruling in the case we have just discussed, was established by cases such as *United States* v. *Harris* (106 U. S. 269) and *Hodges* v. *United States* (203 U. S. 1). In both of those cases the prosecution relied primarily on the thirteenth amendment and to some extent on the equal-protection clause of the fourteenth amendment which were held inapplicable. There was no recognition of the principle involved in the bill under consideration, namely, that the right of a person under charges to a trial was a right to due process guaranteed by the fourteenth amendment and that this right could be infringed when private individuals prevented State authorities from acting. In the lynching cases the basis for Federal intervention is that the mob prevents the suspected person from getting the fair trial which the Constitution guarantees he shall have.

A more nearly analogous situation under the equal-protection clause might be one where private individuals conspired to prevent a Negro on trial from having Negroes sitting on juries. In our opinion, therefore, sufficient basis exists for distinguishing the Harris and Hodges cases even if these should be accepted by the United States Supreme Court as now constituted.

Another basis for upholding the constitutionality of these portions of the bill under consideration is that in effect a lynch mob is, for the time being and often with the connivance of the State, purporting to exercise the power of the law. The Supreme Court has in a number of recent cases recently indicated that merely because the action is in form private action does not remove it from Federal supervision where in fact the area of the action is one normally carried out by the State. This principle was recognized in *Smith* v. *Allwright* (321 U. S. 649) which held that the action of the private Democratic Party of the State of Texas was subject to the restrictions of the fourteenth amendment because operating in the field of suffrage. It was further extended in *Marsh* v. *Alabama* (326 U. S. 501) where the Court held

that a privately owned town could not prevent the use of its streets for the distribution of religious propaganda. As the Court said at page 507:

> Whether a corporation or a municipality owns or possesses the town, the public in either case has an identical interest in the functioning of the community in such manner that the channels of communication remain free.

This may be paraphrased by a statement that whether or not a mob or duly constituted State officer take the custody of a person charged with crime, the public has an identical interest in the functioning of the community in such a manner that the individual be given due process of law.

A third basis upon which constitutional justification for the restrictions upon private individuals may rest is the thought that the purposes of lynching is not merely to deprive the particular individual of his liberty but to intimidate the whole minority group to which that individual happens to belong so that the other members of that group will remain in a condition of inferiority and hesitate to assert rights granted to them by law, including, of course, rights protected by the Federal Constitution. Support for this view will be found in the most recent study of the condition of the Negro in America made by Myrdal, "An American Dilemma."

Moreover, it can be urged that if a community permits lynch mobs to operate with impunity the people of that community have been denied a republican form of government. While the courts have been reluctant in any way to enforce article IV, section 4, of the Constitution, the basis for their reluctance has been that the matter has been political and confided to Congress, not the courts. See, for instance, *Pacific States Telephone and Telegraph Co.* v. *Oregon* (223 U. S. 118).

It is clear, however, that the Constitution gives Congress power to take steps to secure a republican form of government and to protect against domestic violence. See *Luther* v. *Borden* (7 How. 1).

In recognition of that power Congress in 1871 enacted what is now section 203 of title 50 of the United States Code. This permits the President to send militia into any State when because of domestic violence, unlawful combinations, or conspiracies, the execution of the law is obstructed or hindered so as to deny any portion of the community the rights guaranteed by the Constitution. This section provided that when the authorities of the State either are unable to protect the people in their rights or in any way fail in protecting them, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled, under the Constitution of the United States.

The remedies proposed here for the protection of individuals in the case of the failure of constituted authority to protect them are, of course, much less drastic than those established by the section above referred to.

Finally, the statute may be sustained as an aid to the treaty power in fulfillment of our obligations under sections 55 and 56 of the United Nations Charter. See *Missouri* v. *Holland* (252 U. S. 416).

Senator EASTLAND. What are those sections, Mr. Fraenkel?

Mr. FRAENKEL. They impose upon the various member states the duty of preserving democracy and protecting the rights of all minorities.

Senator EASTLAND. What is the other article that leaves the internal policies of a state——

Mr. FRAENKEL. That is true.

Senator EASTLAND. What does it provide?

Mr. FRAENKEL. I don't remember the number of it, but it provides that the jurisdiction of the organs of the United Nations shall not extend to matters which are wholly within the domestic concern of the particular country.

Senator EASTLAND. I see.

Mr. FRAENKEL. We believe, therefore, that legislation of the character proposed by Senators Wagner and Morse will be sustained as constitutional if attacked in the courts. We respectfully suggest that even if Members of the Congress have doubts concerning the constitutionality of this legislation, these doubts should be resolved by the tribunal created for that purpose, namely, the Supreme Court of the United States.

Senator FERGUSON. Are there any questions?

Senator EASTLAND. No questions.

Senator REVERCOMB. I have none.

Senator FERGUSON. Thank you very much.

Senator Stennis, do you want to complete your statement now? We just have a half hour.

Senator STENNIS. I do not think that I could get through in a half hour, Senator.

Senator FERGUSON. Then we will recess until Friday morning at 10 o'clock.

(Whereupon, at 11:30 a. m., an adjournment was taken until Friday, February 6, 1948, at 10 a.m.)

CRIME OF LYNCHING

WEDNESDAY, FEBRUARY 18, 1948

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 9:45 a. m., pursuant to call, in room 424, Senate Office Building, Senator Homer Ferguson, chairman of the subcommittee, presiding.

Present: Senator FERGUSON (chairman of the subcommittee).

Present also: Senator Maybank.

Senator FERGUSON. The committee will come to order.

You may proceed, Senator Maybank.

STATEMENT OF HON. BURNET R. MAYBANK, A UNITED STATES SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator MAYBANK. First of all, Mr. Chairman, I want to thank you so much for letting me come here to appear before the committee this morning.

Senator FERGUSON. We are very anxious to have a complete hearing on this matter.

Senator MAYBANK. Mr. Chairman, we are once again concerning ourselves with a diminishing problem; diminishing, in fact, to the point of negligible existence.

Let me put myself on record right here, Mr. Chairman, as opposing the act of lynching just as strenuously as I oppose this so-called antilynching bill. I cannot condone any act of violence whether it be committed by one person or an assemblage of two or more persons. Such acts violate every principle of honor and of legal procedure. But neither can I sit back quietly and condone the passing around of a political football under the guise of an antilynching bill.

We of the South oppose this bill not because of what it is, but because of what it pretends to be. I cannot bring myself to support a piece of legislation which I am confident will not serve the purpose for which it is intended, but will only deny to our people one of the basic principles of self-government.

Mr. Chairman, I hardly think the loyalty of South Carolina could ever be questioned. Neither do I believe that the diligent officers of our State should be subjected to the openly accusing finger of such a Federal edict, particularly in view of the record they have made in the suppression of this almost extinct crime.

It has been the policy of the Federal Government, since the birth of our Constitution, to leave to the individual States the administration

of their local affairs. We refer to those time-honored and hard-won privileges of self-government as States' rights.

This proposal here before us strikes at the very roots of those rights. How can we preserve a democratic form of government without preserving the governmental responsibility of the subdivisions? Our progress lies in the direction which moves that responsibility closer and closer to the people. But we are now asked to move it closer to the Federal power in order that States and their officials may be prosecuted for their failure, intended or not, to carry out a Federal edict which was passed on behalf of a minority in control of a few votes.

I say let us commend those States and their officials for the outstanding service they have rendered already. You have only to look at the record. The decline of lynching has been just as steady over a period of years as our logical march toward law and order. It is because our people want it so; not because they were regimented into it. It is my sincere belief that the passage of a bill such as this one would ultimately stir up racial feelings such as we have not witnessed in our time.

I do not mean to say, or even imply, that the taking of a human life in any manner is a matter of little concern. But I do say that the bill we are considering here is a gross misrepresentation to those who are asking for its passage. The very name is a misnomer when applied to this bill. This is not an antilynching bill. It does not make lynching any more a crime than it always has been. Instead, it merely creates a new crime within the jurisdiction of the Attorney General of the United States; the failure of a sheriff or any other delegated authority of a State or county to prevent a lynching. It boils down to one basic point: In the event of a lynching the Federal Government will send an official to the county in which it occurred with the express purpose of seeing that "all diligent efforts" were made to "protect such person or persons from lynching." In the event the Federal officer finds that proper precautions have not been taken, the county in which the lynching occurred is then fined. I cannot help but call to your attention the fact that a part of this fine would ultimately be paid by the family and friends of the victim. A State law in Souh Carolina provides that a judgment may be brought against the members of the lynching mob for recovery of such fine.

Senator FERGUSON. That is the law in South Carolina at the present time? You can bring a civil action against the people who are parties?

Senator MAYBANK. Against the people who were parties.

Senator FERGUSON. But not against the county or the city or the State; just against the lynchers.

Senator MAYBANK. Yes.

Senator FERGUSON. Of course, that is true in the case of every murder, or any other crime of that kind. Most State laws provide that you can recover for assault and battery, willful injury, just as you would for negligent injury; if, for example, you hit a man with an automobile, and you were negligent. Is that under the same law?

Senator MAYBANK. I would say that is a special law. In times long ago, appropriations were passed to pay for damage incurred in lynching.

Senator FERGUSON. Then there must be some liability of the State.

Senator MAYBANK. No; they had to pass the law.

Senator FERGUSON. Appropriations, I mean.

Senator MAYBANK. They did that by a special act.

Senator FERGUSON. Oh, a special act to cover damages for lynching.

Could you refer us to some of those special acts? Would you make a memo of that?

Senator MAYBANK. The one that I had reference to was in the city of Charleston. I referred to a State law. I probably would be incorrect in that, but I will get you whatever acts I can.

What we did was to appropriate the funds through a city ordinance to pay for that.

Senator FERGUSON. Would you let me have whatever you can on that?

Senator MAYBANK. Yes.

Senator FERGUSON. Thank you.

Senator MAYBANK. This proposition, this further extension of Federal jurisdiction, comes before us at a fateful time, fateful not only within these United States but in the course of world history as well. If we allow this centralization of bureaucratic control to continue, the time is not far away when such illustrious State names as South Carolina would come to mean nothing more on a map than a geographic subdivision. We can ill afford to allow such a concentration of power in a Central Government, especially when that power is attained at the expense of the individual State.

At a time when we are taking such an active part in the course of world affairs, and the rehabilitation of war-torn countries of Europe and Asia, can we forget the prewar dispossession of power of component units of the European nations?

Gentlemen, we may well stop right here and reconsider the advisability of stripping the individual States of their constitutional authority. There is no conceivable reason for taking such governmental responsibility away from the subdivisions of our Nation in the face of the record as it exists today.

When I last laid my platform before the people of South Carolina, I did so with the deepest convictions that the State is the only governmental subdivision through which a democracy may function. Can it be that we are going to destroy it? Have we now reached the conclusion that there is no longer such a thing as a Federal Union of sovereign States under the Constitution of the United States? Now is the time for us to stop and consider. Let us take heed now lest we awaken one morning and find our States' rights a memory and our only recourse in a firmly entrenched Federal bureaucracy.

This record to which I refer, and shall do so in greater detail in a moment, is, in itself, a glowing tribute to the rightness of our thinking in our constant fight for the preservation of our State rights. The crime of lynching has been reduced to a point of almost complete extinction in recent years. This has not come about through any Federal intervention. It is so because it is the will of the people. I can see no reason for granting the Federal Government authority at this late date for intervening in a cause in which the very States you wish to preserve have already excelled.

Shall we, here in this Congress and in the face of such achievements, honestly say to the world at large that our State rights are being abolished because we cannot depend upon the integrity of the State and county officials? I tell you the people of this country are becoming more and more concerned about the future of our democratic

form of government. They are beginning to fear for this increasing centralization of power as they watch more and more of their rights of self-government slip through their fingers.

And now we ask those good people to place their local officials and citizens under the "protective" arm of the Attorney General of the United States. Under what guise of necessity can we do such a thing? We could say that their duly elected and appointed officials have failed to uphold the faith placed in them at the time they took office. We could charge them with dereliction of duty.

Senator, I would like to make a statement at this point for the record.

Many times those of us who have always fought so hard for law and order, when we oppose something like this, find ourselves misinterpreted.

When I was mayor of Charleston, in 1936, I spent an entire night in front of the jail with the then head of the police commission, afterward mayor, Mr. Lockwood.

I had another bitter experience in 1940, when I was Governor; I do not remember the date, but it was in the fall. There was a very bad rape case in Georgetown. I called Judge Patterson, who was Assistant Secretary of War, and I told him we had not had a lynching in South Carolina since 1920, and I would appreciate not having to call the National Guard company out, because I wanted to see the laws of my State upheld by the law enforcement agencies of my State.

But when this rape case occurred, when the sheriff told me he did not think he could preserve order, I called all of the Guard out immediately, all except that company.

Senator FERGUSON. You mean you called out the National Guard?

Senator MAYBANK. The State Guard.

I kept them there for 2 weeks, when all the rest had gone off to prepare for the war. I kept them there with the aid and sanction of the Assistant Secretary, Mr. Patterson at the time, who very generously gave me the permission, as the Governor, not to put them in service right away.

Senator FERGUSON. On those two occasions, when you were mayor and Governor, there was no lynching?

Senator MAYBANK. Not a lynching in South Carolina. Unfortunately, the only lynching we had in 28 years, was this last winter. That was the only one in the United States.

Senator FERGUSON. What happened at that time?

Senator MAYBANK. A colored fellow murdered a taxi driver, and he was arrested. And they made a mistake. They placed him in a small jail in Pickens.

When I was Governor, what they did was to bring a thing like that immediately to the capital.

Senator FERGUSON. But they did lynch this fellow?

Senator MAYBANK. They went in there and broke down the door and took the jailer away, and carried the boy out and shot him.

Senator FERGUSON. And killed him?

Senator MAYBANK. Yes.

Senator FERGUSON. What happened then?

Senator MAYBANK. They were all arrested and tried.

Senator FERGUSON. And acquitted?

Senator MAYBANK. Yes.

Senator FERGUSON. How do you account for the acquittal?

Senator MAYBANK. Well, my judgment would be that the reason why they were acquitted, and I do not like to differ with what the law did, the attorney general and the solicitors, and so on, was that they indicted all 28 of them, whereas they should have got the main ones, the ones who did it.

Senator FERGUSON. You think the trouble was that they did not get the right people?

Senator MAYBANK. They got all of them. That is the trouble.

Senator FERGUSON. Well, how do you account for those who were guilty being acquitted?

Senator MAYBANK. They tried them all together.

Senator FERGUSON. And the jury, in acquitting one, decided to acquit them all?

Senator MAYBANK. Well, there were 28 members of the lynching party who were apprehended, jailed, and tried.

To proceed with the statement:

Sudden death is common in this country. Figures on manslaughter, murder, rape, robbery, assault, and other crimes mount daily, reaching very sizable proportions by year's end.

The latest figures available at this time from the Federal Bureau of Investigation which cover a full 12 months are for the year 1946. In 1946 there were 4,701 cases of manslaughter; 13 offenses each day; 1.1 offenses every 2 hours.

There were 8,442 cases of murder; 23 offenses each day, 1.9 offenses every 2 hours.

There were 12,117 cases of rape; 33 offenses each day; 1.4 offenses each hour.

There were 67,512 cases of aggravated assault; 185 offenses each day; 7.7 offenses each hour.

These four crimes totaled 92,772 cases in 1 year, 254 offenses each day; 10.6 offenses each hour.

These are only four of the eight major crimes as recognized by our FBI. We use these four because they are termed "offenses against the person." The figures on the eight major crimes run to a total of 1,685,203 cases for 1 year.

Just for the sake of comparing let us look for a moment at the lynching record for the same year. In 1946 there were 6 lynchings recorded by the Tuskegee Institute, the greatest number of the past 5 years and only equaled in the past 10 years by six in 1938. In 1946 there was 1 major crime committed to every 80 persons in this country. There was 1 lynching to every 24,000,000. Even in 1892 when there were 231 lynchings, the ratio was only 1 to 284,000.

The only figures completed at this time for the last year of 1947 are for the period January through June. The major crime offenses in urban communities show an over-all decrease of 2.3 percent over the same period for 1946 with rape leading with an increase of 3.5 percent. The same period for rural areas shows an over-all increase of 7.5 percent with rape showing a 13.6 percent increase.

These trends cover the first 6 months of 1947, showing 580,682 major offenses; 501,242 of which took place in 2,085 cities with a population of 65,537,365. The trend, over the period of years, has been a constant increase. It continues so.

Now let us have a look at the trends in lynching. The number of lynchings each year have consistently decreased from 231 in 1892 all the way down to 1 in 1945 and again in 1947. Significantly, the number of prevented lynchings has increased in direct proportion to the decrease in lynchings.

The following figures come from the Association of Southern Women for the Prevention of Lynching:

Period	Lynchings	Prevented lynchings	Period	Lynchings	Prevented lynchings
1915–20	367	219	1930–35	84	340
1920–25	189	392	1935–40	30	262
1925–30	88	242	1941	1	21

This particular report ends with 1941.

In Tuskegee Institute's report on the one lynching of 1947, President F. D. Patterson said that lives of 39 persons were saved in "at least 31 instances in which lynchings were prevented." Just one more instance to back our contention that this crime has been reduced to a negligible point because the people want it that way; not through fear of a Federal official.

Judging by the trend established during the first 6 months of last year, it would seem that one major crime was committed for less than every 80 people in these United States. And there was only one lynching; 1 out of 145,000,000 people. That one, I regret to say, was in my State.

The people of South Carolina, individually and collectively, were crucified by the press, locally and nationally, for the verdict of that jury. I shall neither condemn nor uphold that verdict here. The point I want to make here today is this: In the one lynching in 1947, the 28 members of the lynching party were apprehended, jailed, and tried. Judge Robert Martin, Jr., charged the jury on four counts: murder, accessory before the fact, accessory after the fact, and conspiracy to murder. According to the witnesses of the trial, the judge minced no words. "A court of law recognizes no color," he charged. "I instruct you not to allow any so-called racial issues to enter into your deliberations." The requirements of the bill before us had been met and complied with.

That is the only lynching in my State, I think, in 28 years. And it was one that nobody regretted more than the people of South Carolina. I can tell you that.

Well, I will go ahead from that, but if you want me to, I would like to get for you for the record from the War Department, the details of how that guard group was detained.

Senator FERGUSON. You have related that.

Senator MAYBANK. I had the guard detained to protect the trial. And the boy that they had there, strange to say, was tried and sent to jail, and later on they got somebody else, and they found out that he was not the one.

Senator FERGUSON. So that if he had been lynched, they would have lynched an innocent person.

Senator MAYBANK. Of course. But there was no lynching, Senator.

Senator FERGUSON. By your protection of this boy is evidence that the State should act.

Senator MAYBANK. I did not take any chance. I just put the guard right there.

Senator FERGUSON. Yes.

Senator MAYBANK. Is any vice which has claimed 36 lives in the past 10 years deserving of such high priority on our legislative calendar in the face of such figures as more than a million and a half major crimes every year, more than 12,000 homicides annually not to mention between thirty and forty thousand annual automobile fatalities? More people will die in this country this winter from exposure to cold than were killed by lynching in the past 10 years.

How can men who are engrossed in the problem of human sufferings by the millions at home and abroad hamstring the legislative procedure of this Congress with a bill which "hopes" to save an average of three lives a year. They cannot even be sure it will save one life. I say it will not. Lives have been saved and lives are still being saved every day just as the record shows by a rising sense of responsibility on the part of the southern sheriff and his officials.

Senator FERGUSON. We appreciate your appearance here, Senator.

Senator MAYBANK. I want to thank you for the privilege. If you would want that done, I can get the Attorney General to send all of the laws that apply.

Senator FERGUSON. I wish you would give me any ordinance or any State statute that gives damages to the individual.

Senator MAYBANK. Senator Eastland had asked the Attorney General to come up here and appear. I do not know why he did not come. He came some years ago.

As a matter of fact, when this bill was before the Congress before, in 1939, I believe, not this same bill, but the bill before the Judiciary Committee then, I think Senator Connally was chairman at that time, and I was Governor, and quite a lot of testimony was introduced into the record at that time.

Senator FERGUSON. Do you have anything further, Senator?

Senator MAYBANK. That is all. Thank you.

Senator FERGUSON. Mr. Cobb, will you state your full name?

STATEMENT OF JAMES A. COBB, FORMER MUNICIPAL COURT JUDGE, WASHINGTON, D. C.

Mr. COBB. My name is James A. Cobb.

Senator FERGUSON. You have been on the bench here?

Mr. COBB. I served 10 years on the bench in the municipal court. Judge Scott succeeded me.

Senator FERGUSON. And you want to put on this record the fact that you are in favor of a bill to allow the Federal Government to proceed, considering it a crime, when there is lynching?

Mr. COBB. I do; yes, sir.

(Whereupon, at 10:15 a. m., hearing in the above-entitled matter was adjourned, subject to the call of the Chair.)

CRIME OF LYNCHING

FRIDAY, FEBRUARY 20, 1948

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 10:45 a. m., pursuant to call, in room 424, Senate Office Building, Senator Homer Ferguson (chairman of the subcommittee) presiding.

Present: Senators Ferguson (chairman of the subcommittee) and Eastland.

Present also: Senator Stennis; Robert Young, committee staff.

Senator FERGUSON. The committee will come to order.

I will put in the record at this time from the Library of Congress a memorandum that was requested by the chairman on the enforcement of judgments against political subdivision of a State under the antilynching bills.

(The memorandum is as follows:)

ENFORCEMENT OF JUDGMENTS AGAINST POLITICAL SUBDIVISIONS OF A STATE UNDER THE ANTILYNCHING BILLS

Assuming that the eleventh amendment does not preclude the suit against a political subdivision, which is provided in the antilynching bills, how can judgments arising from such suits be enforced? The duty of a municipal corporation or political subdivision to provide for and pay a judgment against it is equally as obligatory as the payment by it of any other indebtedness (34 Am. Jur., p. 941), and such duty may, in the proper case, be enforced (see *George Allison & Co.* v. *I. C. C.* (1939), 107 F. 2d 180, cert. denied 309 U. S. 656; *Levine* v. *Farley* (1939), 107 F. 2d 186, cert. denied 308 U. S. 622) by an order of the court upon proper motion under the Rules of Civil Procedure for the District Courts of the United States. See *East St. Louis* v. *U. S. ex rel. Zebley* ((1884), 110 U. S. 321); *U. S.* v. *County of Clark* ((1877), 96 U. S. 211); *Badger et al.* v. *U. S. ex rel. Bolles* ((1876), 93 U. S. 599); *Lower et al.* v. *U. S. ex rel. Marcy* ((1875), 91 U. S. 536). A judgment creditor of a public corporation is not entitled generally to levy execution on the property of a corporation, except in a few States, but must look to its revenues for payment. In the excepted States (largely New England), a practice, supposed to be founded on immemorial usage (*Gaskill* v. *Dudley* (1843), 6 Met. (Mass.) 546), permits the bringing of suits against a political subdivision and collecting the judgment from individuals composing it. Under this practice, it is held that where the inhabitants of towns are charged by law with the performance of duties and made liable to a suit therefor, the individual members are liable to the satisfaction of the judgment, the suit in such cases being regarded as an action against the individual persons, sued by a collective name, as a corporation, rather than as a suit against a corporation. A reason given for this rule is that since towns, and other quasi corporations, have no corporate fund and no legal means for obtaining one, each corporator is liable to satisfy any judgment rendered against the corporation. *Chase* v. *Merrimack Bank* (1837), 19 Pick (Mass.) 564; *Riddle* v. *The Proprietors of the Locks and Canals* (1810), 7 Mass. 169. The rule has been applied to school districts (*McLoud* v. *Selby* (1835),

10 Conn. 390; *Gaskill* v. *Dudley, supra.*) and to counties (see discussion in *Hill* v. *Boston* (1877), 122 Mass 344), as well as to towns and parishes. This principle of individual liability does not deprive the inhabitant whose property is seized, of any of his constitutional rights (*Eames* v. *Savage* (1885), 77 Maine 212). A sounder exposition of the law, however, is that the payment of the liabilities of a municipal corporation is a common burden which should be borne equally by all. Accordingly where there is no local provision authorizing resort to private property, the general doctrine is that such property may not be seized on an execution against the property of the corporation (*Merriwether* v. *Garrett* (1880), 102 U. S. 472; *Rees* v. *Watertown* (1873), 19 Wall. 107; *Miller* v. *McWilliams* (1873), 50 Ala. 427). The same general doctrine has been upheld where private property was sought to satisfy a judgment against a county (*Weber* v. *Lee County* (1867), 6 Wall. 210; *Maricopa County* v. *Hodgin* (1935), 46 Ariz. 247; *Emeric* v. *Gilman* (1858), 10 Cal. 404; *Blaine County* v. *Foster* (1934), 169 Okla. 384; *Emery County* v. *Burresen* (1896), 14 Utah 328).

Even an execution against a political subdivision issued by a Federal court has been held leviable upon the property of the inhabitants of the district where such property was subject to levy and sale under the law of the State (*Riggs* v. *Johnson County* (1867) 6 Wall. 166, 191–2) but not in cases where the rule did not prevail in the courts of the State (*Merriwether* v. *Garrett, supra; Rees* v. *Watertown, supra*; *Riggs* v. *Johnson County, supra*).

Where demand for payment of a judgment is made and refused, the court may issue the proper order subjecting any surplus funds to the judgment (*Mayor of Anniston* v. *Hurt* (1903) 140 Ala. 394; *Emeric* v. *Gilman, supra; Olney* v. *Harvey* (1869) 50 Ill. 453; *Baltimore* v. *Keeley Institute* (1895) 81 Md. 106; *Smith* v. *Ormsby* (1898) 20 Wash. 396; *Emery County* v. *Burreson* (1896) 14 Utah 328). Such order is not necessarily violative of a constitutional provision that no money raised by taxation, loan, or assessment for one purpose shall be directed to another (*Howard* v. *Huron* (1894) 6 S. D. 180). But if the taxing power of the subdivision is limited and insufficient to raise more than the funds required for the payment of current expenses, the judgment creditor will have to wait until a surplus shall accrue, just as any other creditor has to wait upon an impecunious debtor (*U. S. ex. rel. Siegel* v. *Thoman* (1895) 156 U. S. 353; *East St. Louis* v. *U. S. ex. rel. Zebley* (1884) 110 U. S. 321; *Sherman* v. *Langham* (1897) 92 Tex. 13). Although want of funds may be a defense, if the officers possess the requisite power to levy a tax to satisfy the judgment, they may be ordered to do so (*Santa Fe County* v. *New Mexico* (1909) 215 U. S. 296; *Beadles* v. *Smyser* (1908) 209 U. S. 393; *Macon County* v. *Huidekoper* (1890) 134 U. S. 332; and 34 Am. Jur. 987).

As indicated earlier, an execution, as a general proposition, may not be levied against the property of a county or municipal organization unless there is a statute expressly granting such right. (See 21 Am. Jur. 229 citing *Maricopa County* v. *Hodgin* (1935) 46 Ariz. 247; *Mayrhofer* v. *Board of Education* (1891) 89 Cal. 110; *Gilman* v. *Contra Costa County* (1857) 8 Cal. 52 and other cases.) Even where such right is granted, the general rule is that an execution may not be levied on property such as public buildings, fire equipment, school houses, etc., which is held in trust for public use (Ibid, p. 230 citing *Re New York* (1921) 256 U. S. 503; *New Orleans* v. *Louisiana Construction Co.* (1891) 140 U. S. 654; and other cases). Nor may the funds acquired in a governmental capacity for particular governmental purposes be reached inasmuch as they constitute trust funds and a levy of execution on them would interfere with the proper and orderly functioning of governmental machinery (Ibid, pp. 230–231 citing *Klein* v. *New Orleans* (1878) 99 U. S. 149; *Vanderpoel* v. *Mt. Ephraim* (1933) 111 N. J. L. 423 and other authorities).

Senator FERGUSON. Mr. Young, do you have something to read into the record?

Mr. YOUNG. Yes, sir. Let the record show this will be an explanation of the ultimate disposition of the defendants in the case of *Ex Parte Riggins* (134 Fed. 404).

Senator FERGUSON. That was cited in the brief of Osmond K. Fraenkel, and I asked you to get the information, if you could, as to what happened in that case.

Mr. YOUNG. Yes, sir.

The facts show that Riggins and Powell were indicted for conspiracy under sections 5508 and 5509 Revised Statutes. They took one, Maples, from the sheriff of Madison County, Ala., and lynched him.

Riggins applied for discharge on habeas corpus on the ground that the indictment under which he was held did not charge any offense against the laws of the United States.

That is the case of *Ex parte Riggins* (134 Fed. 404).

The writ of habeas corpus was discharged and the prisoner was remanded to the marshal. Generally, the decision went on the grounds that the statutes do not apply to the acts of Riggins.

Senator FERGUSON. So then there was a trial later?

Mr. OUNG. I am coming to that now. That is the first case. The petition for habeas corpus.

The next case is in 199 United States Code 547.

In this case, Riggins appealed the previous case to the Supreme Court of the United States. Habeas corpus was denied by the Supreme Court, and the petition of appeal was dismissed without prejudice.

The decision went on general technical grounds and not to the issues or merits of the previous case.

It was held that habeas corpus cannot be used to correct errors. Here there were the remedies of writ of error and appeal.

That throws Riggins back to his ultimate trial.

Senator FERGUSON. Yes.

Mr. YOUNG. The next case was *The United States* v. *Powell* (151 Fed. 648).

Powell was one of the original codefendants, and he entered a demurrer, after taking a separation, and this demurrer was sustained by the Federal Court.

Again, the issues were not decided. It happened in the same term of the Riggins' case, before the Supreme Court, that the court decided the Hodges case, which is 27 Supreme Court, pages 6 to 51, which involved similar questions.

Generally, the Supreme Court held the conspiracy statutes did not apply unto the acts of the lynchers.

In the Powell case, the Court felt bound by the Hodges case, and accordingly sustained the demurrer. Therefore, Powell went free, and while I have not checked this, I assume that Riggins did also.

Senator FERGUSON. That would indicate then that the Supreme Court has said, at least the Federal courts have now said, that in a lynching by two people they could not be prosecuted under the Federal statute for conspiracy to take away a person's civil rights?

Mr. YOUNG. That was the result of these two decisions. I have not studied the decisions themselves to find out what the thinking of the court was, but the result was the statutes did not apply to this set of facts.

Senator FERGUSON. That is what I mean: Where two people had taken out a person from a jail and lynched him and killed him, that was not conspiracy.

Mr. YOUNG. Under these statutes?

Senator FERGUSON. Under the statute. Notwithstanding the usual definition of conspiracy is a combination of two or more persons to do an unlawful act or to do a lawful act unlawfully.

Mr. YOUNG. That is correct, sir.
Senator FERGUSON. Senator Stennis, do you want to proceed now?
Senator STENNIS. Yes.
Senator FERGUSON. You may proceed.

STATEMENT OF HON. JOHN C. STENNIS, A UNITED STATES SENATOR FROM THE STATE OF MISSISSIPPI

Senator STENNIS. I will take up my statement with the paragraph I left off on before.

Senator EASTLAND. I think you should start from the beginning.

Senator FERGUSON. I think it all ought to go in at one place, Senator.

Senator STENNIS. You think so?

Senator FERGUSON. We ought to have the whole thing in one place in the record. Suppose you start over. If you could, we would appreciate it.

Senator STENNIS. Yes, sir.

First, gentlemen, I want to thank you for an opportunity to appear here today and my remarks will be addressed to S. 1352, as that is the broader of the bills pending before you.

I want to emphasize that I am here not as a perfunctory appearance, but I am here because I believe with all my mind and with every patriotic impulse that I have, that this bill is entirely unconstitutional.

Senator EASTLAND. Right there, Senator, what position did you hold before you were elected to the United States Senate?

Senator STENNIS. I have covered that very briefly.

Senator EASTLAND. You were circuit judge. How long were you circuit judge?

Senator STENNIS. Eleven years.

Regardless of the good faith and high motives of its authors, it is far beyond the powers of the Congress to enact such legislation.

In my humble opinion, these bills strike at the very foundation of one of the vital, fundamental principles of our great Government; that is, the rights and responsibilities of the respective States of the Union.

I emphasize responsibilities as well as rights.

I think it is high time that we go back and consider some of the fundamentals upon which our form of government was founded by the various groups following the Revolutionary War.

We had the Puritans, the Dutch, the Quakers, Catholics, the English, and many other groups, all with their different views and with their different local needs. They all felt the need of, and they agreed to a Union of the States, but they very definitely did not surrender their internal affairs; they created a government of limited powers only, and kept clear the line of separation between the States and the National Government, and to be sure, they provided in the tenth amendment:

> The powers herein expressly granted are reserved to the people and to the States.

The people and the States have never repealed that amendment, and I do not think that they would do so now if the matter were directly submitted to them. But I believe these bills do propose to repeal that amendment piecemeal.

I do not believe that the States would have ever agreed to a Constitution at all if it had not been for a clear understanding regarding the separation of these powers; further, I do not believe that our Government would have grown to the great power that it is if it had not been divided into many separate State units; further, I do not believe that it can, or will, long endure as a great power when that division of State and Federal responsibility and power is removed.

I therefore strongly feel that I speak for both the Federal and State Governments when I oppose this measure.

I want to say right there, gentlemen, that I am from an area where we have two principal races, about equally divided in number. I feel that I appear here for both of those races and speak for what is their best interest in opposing these bills, and I do that based upon 20 years of public service there among those people.

I have been a lawyer by profession for 20 years. I have spent the last 16 years of that time in the courtroom, 5 years as district prosecuting attorney and 11 years as a trial judge of a civil and criminal court of unlimited jurisdiction, the circuit court.

This has given me the most direct and intimate and continuous contacts with court officials, county officers, jurors, and rank-and-file citizens, and with those charged with crime and those convicted of crime. These have included the red man, the black man, and the white man.

My conclusion is that the real strength of our Government is found, not in Washington but in the 3,000 and more county courthouses scattered throughout the length and breadth of our great land, where the people have the responsibility of administering their own affairs according to their own laws and according to their own needs and conditions, and not by some pattern supplied by far-away Government.

Senator FERGUSON. Do you not agree, though, that there are certain crimes that are Federal crimes?

Senator STENNIS. I think so; yes, sir.

Senator FERGUSON. I think we would agree in the statement that a great force does lie in the county courthouse, but also it has been found necessary that we have to have Federal district courts, which are the trial courts for Federal crimes.

Senator STENNIS. Yes, sir.

Senator FERGUSON. We have to recognize certain Federal crimes. Is that not true?

Senator STENNIS. That is certainly true.

Senator FERGUSON. And when the Constitution provides for something and a violation of it would be of such magnitude to be a crime, do you not think that ought to be a Federal crime? For instance, the Constitution guarantees to the people certain inalienable rights; and in our Government, it is one of voting.

Senator EASTLAND. When did the Constitution guarantee that inalienable right? What section?

Senator FERGUSON. It does.

Senator EASTLAND. What section? What amendment guarantees such a thing? It is unheard of. Voting is a privilege conferred by the State if the Constitution means anything.

Senator FERGUSON. I will not discuss that with you now.

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Senator EASTLAND. You cannot point to a section of the Constitution to uphold what you say.

Senator FERGUSON. I can; because it guarantees a republican form of government in every State.

Senator EASTLAND. A republican form. That means the form of government the States had when the Constitution was adopted, and they certainly put restrictions on suffrage.

Senator FERGUSON. It means the right to vote.

Senator Stennis, coming to the next proposition, which is the one here: It guarantees to people equal protection under law.

Senator STENNIS. That is right.

Senator FERGUSON. It guarantees to people equal justice under law; and if a man is arrested for a crime, or even suspected of a crime, and the State is not going to guarantee to that man a trial, due process of law, then a Federal crime has been committed if the National Government at Washington, through its legislative body, declares that to be a crime, and that is why we are sitting in these hearings.

Senator EASTLAND. That would apply to a white man as well as a black man.

Senator FERGUSON. Yes.

Senator EASTLAND. What about the crime of rape? Is that a Federal crime?

Senator FERGUSON. No.

Senator EASTLAND. You protect the lynching and not the rape?

Senator FERGUSON. You said a black or white man. It applies to every man.

Senator EASTLAND. If the Congress has got the right to make lynching a Federal crime, why has it not got the right to make rape a Federal crime?

Senator FERGUSON. Because the lynching is taking away the due process of law.

Senator EASTLAND. It is, when a grand jury investigates it, and when a man is indicted and tried in the State courts?

Senator STENNIS. I think, Mr. Chairman, on your original question there, it is a question, first, of power and not a question of method.

Senator FERGUSON. That is right.

Senator STENNIS. And it does not seem to me like the Congress has the power. But if we do have——

Senator FERGUSON. Then you come next to the question of method.

Senator STENNIS. Yes. My experience has led me to believe that the State method is the best.

Senator FERGUSON. That is a different proposition.

Senator STENNIS. That is right.

Senator FERGUSON. You and I can debate the method, but the question we have to also debate is the power.

Senator STENNIS. That is right.

Senator FERGUSON. It is my contention that Congress has the power. Of course, my contention has been, listening to this evidence, that the method should be worked out in a bill for the Federal Government. That is where you and I differ.

Senator STENNIS. That is right.

Senator FERGUSON. You say that the State can do this job.

Senator STENNIS. And I say the State——

Senator FERGUSON. Should do it.

Senator STENNIS. Yes; should do it; and they are making a bona fide effort to do it.

I am going to cover that point later.

Coming to some of the legal aspects of the various provisions of the bill, one thing that really shocked me was the provision to impose a criminal fine on the political subdivision of a sovereign State of the United States. That just shocks me. It is the creature turning on its creators, with designs of punishment in what seems to me to be a gross invasion of the sacred sovereignty of a State. This is an extreme step to take, as any lawyer will agree, and I respectfully ask the authors of this bill: By what grant of authority do you expect the Congress to proceed?

Gentlemen, I have not been able to find any authority, and I say here that I do not believe there can be presented one line of sound legal authority for section 8 of this bill, which proposes to impose a fine against a governmental subdivision of a sovereign State.

Senator FERGUSON. Could I ask you—your experience is as a lawyer in the Southern States, in Mississippi?

Senator STENNIS. Yes.

Senator FERGUSON. Is there any State law to reimburse, for instance, one who has been injured by lynching, or his heirs, if he has been killed by lynching? Is there any law to compensate the person?

Senator STENNIS. Under the general liability—civil liability laws. We have no special statute.

Senator FERGUSON. You have no special statute?

Senator STENNIS. No, sir.

Senator FERGUSON. In other words, you have a law now that provides, of course, if you hit a person with an automobile and you are negligent in doing it, and he is free from contributory negligence, there could be a judgment given against you.

Senator STENNIS. Yes.

Sentaor FERGUSON. And also, if you commit an assault and battery upon a person, you are liable in damages.

That is true?

Senator STENNIS. Yes.

Senator FERGUSON. But there is no special law.

I think Senator Maybank said at times there were statutes passed in his State which directly compensated people for the effect of lynching.

Senator STENNIS. Yes.

Senator FERGUSON. I wondered whether your State had any such thing.

Senator STENNIS. Nothing in the nature of penalty. We have, of course, our general common-law liability and general liability under our statutes.

Senator FERGUSON. But this law that we are now debating here goes a little further and says that the municipality shall be liable.

Senator STENNIS. That is right.

Senator FERGUSON. I will ask you this: Suppose a resident of Mississippi has a home, and that the police would fail or neglect to prevent a mob from burning his house. A mob just went up and burned it. That will take it out of the so-called lynching. He is not a colored

man. He is a white man. That will get it away from that question.

Would the law in any way provide you could sue the municipality for failing to enforce the law if that man's home was burned down?

Senator STENNIS. Frankly, I do not think so. They might be able to get up some theory of provision upon which the city would be liable but my impression is that they would not.

Perhaps they could go back to the original selection of those officers, if they selected a knave or something like that. It is like a master selecting the wrong type of servant. But I do not think we have any law directly covering that.

Senator EASTLAND. Does Michigan?

Senator FERGUSON. I never heard of one that would allow recovery, but I can imagine a case where you could get damages against the municipalities.

I do not know of any law, but apparently Senator Maybank was talking about a special statute for the purpose of compensating.

Senator STENNIS. We have no such statute, I am sure.

Senator FERGUSON. But that is what is in this statute: That the municipality becomes liable, or the county becomes liable, or the State becomes liable, for its failure to enforce the law.

Senator STENNIS. What shocked me was not the proposition of wanting to do justice, but the idea of the Federal Government imposing a penalty on a subdivision of a sovereign State.

If the State saw fit to do that, that is altogether a different question, I think. The State is the parent of the subdivision.

Senator FERGUSON. There you come again to the question of the right of the Federal Government to do it.

Senator STENNIS. Yes, sir.

Senator FERGUSON. I do not think there is any doubt you and I would agree the State could do it. If the State legislature wanted to pass a law and say if the municipality did not do the job, they could become liable, they could do it.

Senator STENNIS. That is right.

Senator FERGUSON. Of course, the old "hue and cry" law was a very similar idea, was it not, in ancient times in England: That if the crime was committed and the municipality failed to put forth a hue and cry that the king levied a penality on the municipality of so much damages for failing to put forth the hue and cry? Was that not true?

Senator STENNIS. I think that is right. I refer to that in here.

Senator FERGUSON. Has that ever been carried to our States under our common law?

Senator STENNIS. Not that I know of, Senator.

Senator FERGUSON. That is, if they fail to do their duty. I do not say that is not a law in Michigan, but I just have not had it ever called to my attention. But if they failed to do their duty—that is, the municipality does not have a police force that will go out and reasonably enforce the law—is the municipality liable to the citizens for the damages caused by virtue of a negligent police department?

Senator STENNIS. Of course, we have most of our officers under bond, and that is for the benefit of anyone injured.

Senator EASTLAND. Would not the same thing be true of the right to work? The right to work is a God-given right. Here is a strike. There is violence on a picket line. The police will not enforce the law.

Senator FERGUSON. It would be the same thing. I do not see any distinction. That is why I eliminated the question of the colored man and the white man, so there could be no argument there was prejudice and take away that feeling.

Of course, there have been a number of white people lynched.

Senator STENNIS. Oh, yes.

Senator EASTLAND. As many as Negroes.

Senator FERGUSON. I never had the figures, but someone put them in the record the other day.

Senator EASTLAND. As long as you have rape, you are going to have lynchings.

Senator FERGUSON. Of course, there have been lynchings where there has not been rape or any evidence of it.

Senator STENNIS. While we are on the point, I want to assure this committee, I know of my own personal knowledge there is an active, conscientious, consistent effort on the part of the people in the area of the South I come from to prevent lynchings, or prevent the infliction of corporal punishment outside the law, and that those things are taken very seriously.

Men take an active stand on it. When there is any thought that anything like that may come up, men assure the judge over the telephone, or come by the courthouse, and say, "Now, you have our moral support," and things like that.

I do not mean to say those things occur every day, but they occur when they think something may happen.

Senator EASTLAND. I have seen the best people in the community take their guns and go and help the police.

Senator FERGUSON. I think the record shows that Senator Maybank said, when he was mayor, he went down to the city square and personally helped to prevent a lynching; and when he was Governor, he personally went out.

Senator EASTLAND. Yes.

Senator FERGUSON. Which demonstrates to me, at least, if the municipality wants to prevent the thing, they can go a long way to prevent it.

Senator EASTLAND. I have never known one where there was connivance with the peace officers.

Senator STENNIS. I have not, either.

Senator FERGUSON. Has it not been known in some of these cases that the police officers themselves helped to take the person out?

Senator EASTLAND. I do not believe that.

Senator FERGUSON. I do not have any facts.

Senator EASTLAND. I do not believe that.

Senator FERGUSON. It is the impression I have from reading.

Senator EASTLAND. You find, where it happens, that generally the mob gets the accused rather than the officers. They capture him first.

Senator FERGUSON. Are there any organizations in the South—take the Ku Klux Klan, for instance—that one of its purposes is that of lynching?

Senator EASTLAND. I would not say so. Of course not. No organization has for its purpose lynching; and as far as the Klan is concerned, I have never heard of it. We have got none in Mississippi.

I expect you have got more of them in Michigan than we have got in all the South.

Senator FERGUSON. We had some experience in Michigan with the Black Legion, which was an offspring there of the Klan, as I understand it, and that had as one of its purposes really the killing of people.

Senator EASTLAND. We never had anything like that.

Senator STENNIS. The charge has been, Senator, that people from our area want to oppose these bills and keep it where there will not be any Federal law to interfere with anything they might want to be done.

Senator FERGUSON. If this law is passed, it will apply to Michigan as well as Mississippi.

I am not purporting here that Michigan is lily white, you know.

We would have people that sooner or later may come under this particular law.

But my feeling is we have got to prevent these things; we have got to have equal justice under the law; and we have got to have due process; and whether we do it by State laws or Federal laws, we have got to do the job.

Senator EASTLAND. You say "prevent." Is it something that occurs often or a rare thing?

Senator FERGUSON. I do not say you can prevent it by criminal law, but you have got to punish people who carry it out.

Senator EASTLAND. Is there much in this country? The records show one case last year and no facts to show it could be prevented.

Senator FERGUSON. Do you not feel that one of the reasons for punishment is it deters people from committing similar crimes?

Senator EASTLAND. What about the State of Illinois? For instance, there was the most horrible thing I ever read—machine-gun battles on the street between two gangsters. As a result, forty-odd men were killed and not a one was convicted. They got out with tanks and shot at each other. We did not hear any cry going up here that law enforcement in Illinois had broken down and we had to have a Federal act.

Senator FERGUSON. That does not mean that Illinois could not benefit by a Federal law to prevent that.

Senator EASTLAND. When you have wholesale unlawfulness and robbery in Michigan, you do not hear a hue and cry that their law has broken down and you have got to have a Federal act and send the Federal Government in.

Senator STENNIS. Just as actual proof on the attitude of the people, by and large, being opposed to lynching now. That is what we are getting down to, lynching. And what is the attitude of the people.

A little over a year ago I was called to a county where I was a stranger to hold a week of court, where the docket had already been set. There was not any chance to get down there and learn anything about the nature of things, and when I got there, there was already a case set for trial where there was a colored man charged with what was an atrocious rape on a white lady there in this little city while she was tending her sick baby late at night.

I did not know what the situation was. Reports came to me that they might attempt to take the defendant.

Trial was set for the next day.

I told the sheriff to get 20 reliable citizens, half young men and half more mature men, and they came in there the next morning.

I conferred with them back in the room and told them I was a stranger and was going to rely on what they said; that they had a case where it was the duty of the county to protect the prisoner; and whether or not they were willing to stay there as civil deputies if needed.

I compared it with the young GI's, the idea they had gone out to defend their flag on the battlefield, and if necessary we wanted to preserve the principles for which that flag stood there at home, and if necessary they might have to stand in line when it would not be peaceful.

I did not know about that. It was just reported.

Every one said they were willing.

As it turned out, there was nothing to this threat, but I was greatly impressed with their attitude—a unanimous decision there from these representative citizens throughout the county.

I respectfully raise the question, How does the author of this bill propose to enforce such a judgment against a political subdivision of a sovereign State?

That is something I just cannot comprehend, and I raise a further question, What are the facts justifying, even if there was authority therefor, such a revolutionary step by the United States Government?

All will agree, I think, that the Federal Government should not intervene in local matters unless reasonably necessary. Whatever conditions of the past may have been, since there was only one lynching in 1947, does not this show that time and local governments and local pride and local interests have almost won the battle?

I believe, and I respectfully submit to you, that to now step in and have a Federal penalty imposed on the local government and on the local officers of the State government will kill the spirit of the entire movement by the local people and officers to eliminate lynching.

We must remember that this local effort to eliminate lynchings has almost reached perfection.

As I understand the spirit of those people I have worked with, that is one of the key points, gentlemen. That is one of the key points in the matter I want to present to you.

I have discussed this matter in all of its phases with the people and officers of many communities on many different occasions, and there is absolutely no doubt in my mind but that it will far better serve the interests of those to be protected and have the wholehearted and active interest of local people and the local officers than would be an objectionable Federal law, with the attempt to enforce it from Washington.

Senator FERGUSON. Senator Stennis, have you found this to be a fact? I do not say it should be a fact, but have you found it to be a fact: That there is more fear of violating a Federal law than there is of a violation of a State law?

I will give you an example. Take the postal regulations, and so forth. We have very little crime in relation to letters in the mail, and so forth, whereas that would be considered in the average State as a petty thing, to steal a thing, or to interfere with it.

But is not there a feeling that the Federal law has been better enforced than the State law?

Senator STENNIS. I can just speak now from my own observations and what I say is with all deference to the courts.

With the Federal probation law and a number of other regulatory matters that have come up in the last 20 years——

Senator FERGUSON. I think you have one good answer—that it was not on the prohibition law—but I think the State laws were equally badly enforced.

Senator STENNIS. I am talking about the respect for Federal law.

Senator FERGUSON. That is what I want to get.

Senator STENNIS. Coming to the probation law, and a number of other Federal regulations, which take the form of criminal law and criminal law itself, and with the suspended sentence in the Federal court, I do not think in the minds of the people now there is any more fear of Federal law than there is of State law. That is my opinion about it, and I am speaking for the area in which I live.

Senator FERGUSON. Do you not think generally there has been a better job done in the Federal courts in the enforcement of criminal laws than in the State courts?

Senator STENNIS. The prosecuting authorities in Federal courts have at their hand a much better system of investigation and greater aids.

Senator FERGUSON. That is what I am getting at.

Senator STENNIS. But when it comes to the enforcement of the law, because of the interest of the people, the spirit of the law—I do not like to compare the courts—but I think, considering the magnitude of the problem before them, the State courts have done the better job, and I say that with all respect to our Federal courts, which are very fine.

Senator FERGUSON. I know, when I was on the bench also, I considered it was the duty of the officer—the judge—to do the job, and I generally found that the law was sufficient if the administrator of the law really did his job. That is usually what happens.

Senator STENNIS. Yes.

Senator FERGUSON. It is the administrator of the law.

But has there not been a feeling that in the South the administrator of the law in relation to lynching, there has been no sympathy—not "no"; that is not the proper expression. But there has been not the same sympathy with its enforcement as with the enforcement of other laws generally.

Is not that a feeling?

Senator STENNIS. Will you restate that, Senator?

Senator FERGUSON. I will put it this way, that there is a feeling when a lynching has occurred that there is not the same desire to prosecute that crime as there is if a person has been raped. They want to enforce the penalty for rape, but if a person has been lynched in a case which has nothing to do with rape, there is not the same desire to enforce the law against lynching.

The same desire should be there, that all laws should be enforced.

Senator STENNIS. Well, those things are a matter of intensity. I think the crime of rape arouses the interests, the feelings, and the concern of the people in the South more than any other crime.

Senator FERGUSON. But is not this true: The same thing should apply to the enforcing officers? I am talking now about the enforcing officers, not the general public.

The same desire to prosecute a criminal should be there whether he is a murderer or whether it is rape.

Senator STENNIS. There are varying degrees of zeal.

Senator FERGUSON. I am talking about enforcing officers.

Senator STENNIS. I know. I think it is natural if some girl out here is ravished, there be more zeal on the part of the officers to try to apprehend the man that is guilty than if some girl is ravished and, say, a mob does lynch the guilty man—more zeal in trying to apprehend the rapist than the lyncher. That is true; yes.

I think that is human nature. I think that is true anywhere, not just in the South. It could be true under a Federal law, too.

Senator FERGUSON. Does not that take us to the next step. If you have a Federal law, the distribution of the people to enforce that law is over a greater area, and, therefore, the zeal to prosecute that person would be greater than if it was confined to a local community because your attorney general covers the whole State of Mississippi and Michigan together, being a Federal Attorney General here in Washington. He is a Cabinet officer.

And then his local officer is appointed, not by the local people exactly, but really by the President and confirmed by Congress.

Your jury is over a greater area. So you have a different law enforcement in the Federal court.

Would not that give us better law enforcement if we had a Federal crime of lynching?

Senator STENNIS. No, sir.

Senator FERGUSON. I think that is the question before us.

Senator STENNIS. I really do not think so. I feel sure of that from my area and that is based on experience.

Senator FERGUSON. Yes. You have been a judge there and you are giving your experience.

Pardon me for interrupting, but I did want to put these propositions to you.

Senator STENNIS. I am very glad to try to discuss them.

Right along that line, I do think this bill affects our serious problems connected with racial relations, and I think its enactment would totally fail to carry out its purpose and would be a tragic and far-reaching mistake. I think that is entirely possible that it would be very tragic and far-reaching.

If it is going to be passed, I hope it will not be such a tragic mistake.

Of course, I do.

Senator FERGUSON. Your State has capital punishment in first-degree murder cases?

Senator STENNIS. Yes, sir.

Senator FERGUSON. Does it have it also for rape?

Senator STENNIS. It is a question for the jury, Senator. The jury has to agree unanimously, the 12, before the punishment can be imposed.

Senator FERGUSON. They give the punishment as well as the guilty sentence?

Senator STENNIS. On that particular point.

Senator FERGUSON. In rape or murder?

Senator STENNIS. In each. In all capital cases.

Senator FERGUSON. We did not have capital punishment in Michigan.

Senator STENNIS. That is right. I remember that now.

Senator FERGUSON. But our Federal law for certain bank robberies is capital punishment, and I think that had something to do in Michigan with stopping bank robberies there.

Senator STENNIS. We passed the robbery-with-firearms law, we call it, which makes it possible to impose the death penalty even though no one is injured.

That is up to the jury, and they do not apply it except in extreme cases.

The proponents of these measures who are sincere—and I am sure a number of them are sincere—often look on these questions as being solely matters of right and wrong, and they take what they consider to be the right side: that is, the side opposed to lynching, and they honestly think that that ends the argument. I can see that point.

They are eminently correct in being opposed to lynching and are further eminently correct in being in favor of all reasonable and legal measures that tend to reduce or eliminate lynching. I certainly go with them this far in theory and in active practice and influence over the years.

I call your serious attention to the further fact that there is a practical side to this question. It is not a theory but it is a practical problem, and must be handled in practical ways, and as far as this pertains to our racial relations, I am absolutely certain in my own mind that as a practical proposition it is far better that we endeavor to make progress with the cooperative leadership and mutual respect and competence among the leaders of the respective races working together, as is the practice in my area now.

And that is where I have worked, and I have had some most delightful experiences with the leaders of the different races in the community.

They come together voluntarily. They have a great way of working these things out.

Senator FERGUSON. Is it not also true that this is a political question?

Senator Stennis. I am not so considering it, Senator.

Senator FERGUSON. Have not recent events indicated that the question as to whether or not there will be a Federal law against lynching is a political question?

Senator STENNIS. That law that is before you here now I do not consider at all a political question, and I am not appearing here in that capacity.

Senator FERGUSON. Is there not a so-called "rebellion" in some States at the present time against a political party because it may be passed ?

Senator STENNIS. The people are deeply concerned, of course, with all those laws.

But I am not looking on it here as a political matter at all. I am looking on it as an attempt to regulate the affairs of government, criminal-law enforcement in the local areas, and from the attitude of the citizen and what is best for the rule of all the people of each race.

Senator FERGUSON. Let us take the attitude of your Governor on this question. This is what he calls a political question. He is strongly, as I understand it, against any bill that would make it a crime to lynch in Mississippi. Is that not right?

Senator STENNIS. I think he is strongly opposed to the bill; yes, sir.

Senator FERGUSON. And at the present time it has become really a political question not only in the States but it is becoming a political question nationally.

Senator, that being a political question, does it not demonstrate to the people of the United States—and that is what Federal law must represent, the people of the 48 United States—if they are going to get anywhere on this question they have got to have a Federal law rather than a State law because the State officials are so opposed to the enforcement of these kind of laws by Federal Government that they feel it is the only way they can get them enforced?

There is talk there, as I understand it, now, that you are going to break away from the regular Democratic Party because of these questions.

Senator STENNIS. Senator, the Governor's objection is directed to the so-called civil-rights program as recommended.

Now, the people in Mississippi are for law enforcement, and Governor Wright is very strong for it, and very conscientious in the exercise of his responsibilities.

Senator FERGUSON. Here is the thing I have difficulty on: this proposition we are all in favor of civil rights. We all want laws so the civil rights may exist.

The difference in my view, I think, and your view and the Governor of your State. I am willing to have a Federal law and State law and local ordinance to secure to the people these civil rights. I say "secure" and not "guarantee" because I realize that Government cannot give a right to a person. They can secure to them an inalienable right, and I think one of the inalienable rights is, he should not be lynched.

I am willing to have an ordinance and State law and Federal law to do that.

You say: "We will go along with you on an ordinance and a State law, but we will not allow the civil rights to be guaranteed by the Federal law."

Why not, if it is a crime?

Senator STENNIS. Well, the objection of the Governor of Mississippi to this law is based on the interference, the encroachment, upon State affairs and State sovereignty and State powers and responsibilities.

Senator FERGUSON. Do you think this is true: That white supremacy, though, does have something to do with his attitude of not wanting a Federal law?

Senator STENNIS. I do not know just what you mean by "white supremacy."

Senator FERGUSON. We hear a lot about it.

Senator STENNIS. Here is my attitude about our relations there with the races: That we—and when I say "We" I mean those of the colored race and my race—understand the problems, the situations, better than anyone else; that we can work out and are working out the solutions better than anyone else. I am convinced of that.

Senator FERGUSON. Going back to my question, is not there some feeling by some people that if you passed Federal laws you are going to interfere with this question of what is considered white supremacy?

Senator STENNIS. I do not know just what you mean by "white supremacy."

Senator FERGUSON. You know generally what is mean by it.

Senator STENNIS. That is right.

Senator FERGUSON. Is there not a feeling like that, and is not that what is happening now, in some of your State there is a feeling that the Federal Government is going to get into this field, and if they do, and they pass these laws and they become Federal laws, that it is going to interfere with that question, and therefore they are going to the bitter end to oppose all Federal laws along these questions?

Senator STENNIS. It will interfere with the racial relations in the South. That is one reason I am so vitally concerned and so vitally interested in it. I know we have made progress, and I think we are going to continue to, but I feel certain in my mind that outside interference and encroachment will disturb those relations and set us back and cause serious trouble—cause serious trouble.

I think Governor Wright feels that way about it.

Senator FERGUSON. That means you have got a Federal judge in Mobile, and he is a resident of that district. He has been named for life by the President and confirmed by the Senate. He is one of your citizens.

You also have a Federal district attorney. He has been one of your citizens. He has been named by the President and approved by the Senate.

Now, you say, in a way, "We do not want those men to enforce the law. The jury would be from Mississippi. We do not want them to enforce the law. What we want is for our own circuit judges to enforce this kind of criminal law and our own State's attorney; and if we do not get that, then it is going to interfere with our race relations."

Is not that about what happens, and therefore it becomes a big political question?

Senator STENNIS. I think, Senator, that gets off the track of the main point here, and the main thought in the mind of the people in Mississippi.

I do not think that is the basis of their objection.

We have problems there, as in any area, and we feel very strongly that we are the ones who are going to live there, and we are the ones that are going to have to deal with them from day to day. And the practical approach for it is for the races to work together and not have some far-off superintending power or law.

I am going to cover that later in my statement here.

I tell you what we fear in my area is not the races being able to get along, we fear the outside agitator and organizer and troublemaker that comes in there and stirs those people up. That is what we fear.

Senator FERGUSON. You and I believe that the crime of lynching should be punished.

Senator STENNIS. Absolutely; yes, sir.

Senator FERGUSON. We agree on that.

But we disagree, apparently, on the question of who ought to punish it.

Senator STENNIS. The method. There is a question of power, too, Senator, the power and then the method.

Senator FERGUSON. That is where we would differ, as to who would punish.

Senator STENNIS. That is right.

Senator FERGUSON. As I said, I believe that any machinery of government all along the line should be in on this to be sure he gets punished.

I think now, probably because it is 1948, it is more or less becoming a political question as well as a question of crime.

Go ahead with your statement.

Senator STENNIS. We are as anxious to solve these problems as is anyone, and more so; and with the better understanding of these problems on the part of the peoples from other areas of the Nation, they can and will be of further aid to us.

I look forward to the day when our problems shall be better understood; therefore, more nearly solved. But then as now, Federal law, Federal control, and Federal domination will not be the answer.

I am going to omit some of this.

I want to raise this point: This is one of a series of laws of far-reaching power proposed at this session of the Congress in which the FBI is given great responsibilities. This agency has a splendid record so far as I know, and my impression is that they have rendered a great service to the Nation. But if the wings of the FBI are extended, so that the Federal police power of this Nation undertakes to supervise the administration of the criminal laws of the States from coast to coast, that date will mark, in my opinion, the beginning of the decline of the FBI.

We should consider now the possibility of that day in the future when its Director and staff may not be as highly patriotic and efficient as the men we now have there.

We should most seriously consider the dangers that can easily arise from even a slight abuse of power of a far-flung police force controlled from Washington but attempting to actively supervise enforcement of all criminal law throughout every precinct of the Nation. I do not believe that the facts justify such a step.

I believe right there that we have a very fine organization within the Government, with a splendid record. But I believe if we keep extending its powers and duties more and more and more, finally we will have something that the Congress will be afraid of, that the people, in order to carry out its tremendous powers and responsibilities, will have to be more or less intimidated in order to carry those laws through.

I do not look with favor on a greatly built-up Federal control, Washington-directed, Nation-wide police force.

Senator FERGUSON. You agree, then, at least, the enforcement of criminal law should not be a political question?

Senator STENNIS. Absolutely, I agree with that.

Senator FERGUSON. Do you know today the enforcement of civil rights is a political question because there is a rule in the Department of Justice that the FBI cannot investigate a civil-rights case until the Attorney General of the United States gives the word, and then it is only investigated as far as he desires it to be investigated?

Do you realize that in our Government today that certain crimes are considered purely political crimes?

Right at this very table yesterday that was brought out.

Senator STENNIS. I am not familiar with those phases of it.

Senator FERGUSON. That should not exist. It should be a crime, and after it is made the law it ought to be the law whether or not the Attorney General likes it or not.

It is the law until repealed by the Congress. But that is not true today, as I heard the testimony yesterday. It becomes a political question and a Cabinet officer says as to whether or not a certain crime should be punished.

Senator STENNIS. Because of the questions, I have not covered some of the points I have here in writing.

I want to come back to this point.

We, the members of both races, know our problems better than anyone else in the world, and I believe we can work out the best solutions. We are doing that.

The better leaders and thinkers of each race know and have confidence in each other.

I state that as a fact.

We do not fear each other. We fear the crank, the outside meddler, and the paid agitators who make their living by stirring up strife and enmity among the races there and elsewhere.

I know these bills are supported by many highly patriotic people. I do not at all question their motives. I just think they fail to see the problem in its full true light, and I plead for future time for the patriotic leaders of both races in the South to continue their splendid progress without interference or set-back.

I believe, and most sincerely submit to this committee, that the progress made by the two races in the South for harmony and concord and progress and mutual benefit for the past 82 years has never been equaled in the history of the world where such large numbers of people were involved, and living in such close proximity to each other.

The problem was made immeasurably greater by the unfortunate reconstruction days. I do not say that in criticism of anyone. It was just made unfortunately greater by the problems of reconstruction days.

Do not inflict the races with such an artificial and unnecessary burden again.

Senator, if I can answer any questions, I will be glad to.

Senator FERGUSON. Senator Stennis, I feel that your statement, without interruption and complete, should appear in the record.

We will therefore ask the reporter copy it in at this point.

(The statement is as follows:)

Gentlemen of the committee, first, I want to thank you for this chance to appear here today. My remarks shall be directed to S. 1352.

I make no perfunctory appearance here today, but am here because I believe with all my mind and with every patriotic impulse that I have, that this bill is entirely unconstitutional, and regardless of the good faith and high motives of its authors, it is far beyond the powers of the Congress to enact such legislation. In my humble opinion, these bills strike at the very foundation of one of the vital, fundamental principles of our great Government—that is, the rights and responsibilities of the respective States of the Union. I think it is high time that we go back and consider some of the fundamentals upon which our form of government was founded by the various groups following the Revolutionary War. We had the Puritans, the Dutch, the Quakers, Catholics, the English, and many other groups, all with their different views and with their different local needs. They all felt the need of, and they agreed to, a union of the States, but they very definitely did not surrender their internal affairs; they created a government of limited powers only, and kept clear the line of separation between the States and the National Government, and to be sure, they provided in the tenth amendment: "The powers herein not expressly granted are reserved to the people and to the States." The people and the States have never repealed that amendment and I do not think that they would do so now if the matter was directly submitted to them. These bills do propose to repeal that amendment piecemeal.

I do not believe that the States would have ever agreed to a Constitution at all if it had not been for a clear understanding regarding the separation of these powers; further, I do not believe that our Government would have grown to the great power that it is if it had not been divided into many separate State units; further, I do not believe that it can, or will long endure as a great power when that division of State and Federal responsibility and power is removed. I, therefore, strongly feel that I speak for both the Federal and State governments when I oppose this measure.

I have been a lawyer by profession for 20 years. I have spent the last 16 years of that time in the courtroom, 5 years as district prosecuting attorney, and 11 years as a trial judge of a civil and criminal court of unlimited jurisdiction, the circuit court. This has given me the most direct and intimate and continuous contacts with court officials, county officers, jurors, and rank-and-file citizens, and with those charged with crime and those convicted of crime. These have included the red man, the black man and the white man. My conclusion is that the real strength of our Government is found, not in Washington, but in the 3,000 and more county courthouses scattered throughout the length and breadth of our great land, where the people have the responsibility of administering their own affairs according to their own laws and according to their own needs and conditions, and not by some pattern supplied by far-away government. In local government, the people feel their personal responsibilities as citizens. I have found that the strongest appeal we have to the individual citizen is the appeal to him to do his part in his local unit of government in making democracy work. It seems clear to me that when we take this responsibility away from the local citizen, and further, when we act to brand his community as criminal and impose a penalty thereon because of some crime therein, then we are inviting the individual citizen to neglect and lose interest in his local responsibilities in local affairs.

I am shocked at the idea of this bill seeking to impose a criminal fine on a political subdivision of a sovereign State of the United States. It is the creature turning on its creators, with designs of punishment in what seems to me to be a gross invasion of the sacred sovereignty of a State. This is an extreme step to take, as any lawyer will agree, and I respectfully ask the authors of this bill, By what grant of authority do you expect the Congress to proceed?

Gentlemen of the committee, I do not believe there can be presented one line of sound legal authority for section 8 of this bill which proposes to impose a fine against a governmental subdivision of a sovereign State. And I respectfully ask the author of this bill now to present his authorities, if any he can, for this bold proposition of suing a State for such purposes. Frankly, I have not been able to find one single line of respectable authority for this proposition, and on the other hand, I find a great abundance of authority to the contrary and shall submit the cases to this effect in a supplemental statement.

Gentlemen of the committee, I respectfully raise the further question, How does the author of this bill propose to enforce such a judgment against a political subdivision of a sovereign State?

And I raise the further basic inquiry, What are the facts justifying, even if there was authority therefor, such a revolutionary step by the United States Government? All will agree, I think, that the Federal Government should not intervene in local matters unless reasonably necessary. Whatever conditions of the past may have been, since there was only one lynching in 1947, does not this show that time and local governments and local pride and local interests have almost won the battle?

I believe, and I respectfully submit to you, that to now step in and have a Federal penalty imposed on the local government and on the local officers of the State government will kill the spirit of the entire movement by the local people

and officers to eliminate lynching. We must remember that this local effort to eliminate lynchings has almost reached perfection. I have discussed this matter in all of its phases with the people and officers of many communities on many different occasions, and there is absolutely no doubt in my mind but that it will far better serve the interests of those to be protected, and have the wholehearted and active interest of local people and the local officers, than would be objectionable Federal law, with the attempt to enforce it from Washington.

As a matter of principle in government, I am strongly opposed to this bill, not because of its ultimate objectives but because of its invasion of a field of government, where the responsibilities therefor lie directly on the States. But also, as the bill affects our serious problems connected with racial relations, I think its enactment would totally fail to carry out its purpose and would be a tragic and far-reaching mistake. The proponents of these measures, who are sincere—and I am sure a number of them are sincere—often look on these questions as being solely matters of right and wrong, and they take what they consider to be the right side—that is, the side opposed to lynching—and they honestly think that that ends the argument. They are eminently correct in being opposed to lynching and are further eminently correct in being in favor of all reasonable and legal measures that tend to reduce or eliminate lynching. I certainly go with them this far, in theory and in active practice and influence over the years.

I call your serious attention to the further fact that there is a practical side to this question. It is not a theory, but it is a practical problem and must be handled in practical ways; and as far as this pertains to our racial relations, I am absolutely certain in my own mind that as a practical proposition it is far better that we endeavor to make progress with the cooperative leadership and mutual respect and confidence among the leaders of the respective races working together, as is the practice in my area now. Splendid results could be shown there now. We are as anxious to solve these problems as is anyone, even more so; and with the better understanding of these problems on the part of the peoples from other areas of the Nation, they can and will be of further aid to us. I look forward to the day when our problems shall be better understood; therefore, more nearly solved; but then, as now, Federal law, Federal control, and Federal domination will not be the answer.

In my long contact with county, State, and city officials, I have found them, by and large, to be men of character and fair ability. I think it will kill their pride and arouse their resentment for the Federal Government to attempt to put all these officers in a strait-jacket regarding the performance or attempted performance of their duties and to hang over their heads the threat of making convicts or felons out of them if they are found guilty by some far-removed court of what someone else may deem to be negligence in their performance of their official duties as State officers.

This is one of a series of laws of far-reaching power proposed at this session of the Congress in which the FBI is given great responsibilities. This agency has a splendid record, so far as I know, and my impression is that they have rendered a great service to the Nation. But if the wings of the FBI are extended so that the Federal police power of this Nation undertakes to supervise the administration of the criminal laws of the State governments from coast to coast, that date will mark, in my own opinion, the beginning of the decline of the FBI. We should consider now the possibility of that day in the future when its Director and staff may not be as highly patriotic and efficient as the men we now have there. We should most seriously consider the dangers that can easily arise from even a slight abuse of power of a far-flung police force controlled from Washington but attempting to actively supervise enforcement of all criminal law throughout every precinct of the Nation. I do not believe that the facts justify such a step.

This act purports to have Congress create the following causes of action arising from lynching:

1. Civil actions against individuals.
2. Civil actions against State governmental subdivisions.
3. Civil actions against State officers.
4. Criminal actions against private citizens.
5. Criminal actions against State officers.

I submit that there is not one scintilla of respectable authority to sustain either 1, 2, 3, or 4 above; and, on the contrary, there is express and direct authority to the effect that Congress has no such authority whatsoever.

The precise legal question presented is: What section or clause of the Constitution of the United States expressly or by necessary implication confers power on the Congress to pass such legislation?

The bill must be bottomed on some specific definite grant of power This is the test, because the tenth amendment provides:

"The powers not herein expressly granted are reserved to the people and to the State."

The only pretended authority ever presented as a legal basis for the bill, so far as I have heard, has been the fourteenth amendment, particularly the "due process of law" and "equal protection of the laws" clauses. So-called civil rights bills were passed following the adoption of the fourteenth amendment, and those bills were passed on by the Supreme Court of the United States The opinions definitely fixed the meaning and the limitations of the fourteenth amendment and limited the amendment to corrective legislation to be applied to the States, or to officers and agents of a State, when attempting to enforce State law or regulations that were themselves in contravention of the fourteenth amendment. The conduct of private individuals, and the conduct of State officers acting under valid State laws, was conduct the Congress did not even try to cover by the civil rights statutes following the adoption of the fourteenth amendment. This was well settled by a long and uninterrupted line of decisions by the United States Supreme Court, and of which *United States* v *Harris* ((1882) 106 U. S. 629), Revised Statutes, section 5519, passed soon after the adoption of the fourteenth amendment, made it a criminal offense for two or more persons to go on the premises of another for the purpose of depriving them of the equal protection of the laws, or of hindering State officers from securing to all persons the equal protection of the laws.

In a case involving the prosecution of individuals under the act, all kindred legal questions under the fourteenth amendment were fully considered, and the act was declared unconstitutional and void, as it was beyond the power of Congress to enact legislation under the fourteenth amendment to control individual conduct.

The next year the *Civil Rights cases* ((1883) 109 U. S. 3) were before the Court under a congressional act providing for equal rights and privileges for all races at theaters and other such places After full consideration of the extent of congressional authority under the fourteenth amendment, the Court again held that Congress had no power thereunder to control individual conduct.

The foregoing cases represent the fundamental principles of the legal questions involved. The cases have not been overruled and are now the supreme law of the land.

These established legal principles leave the entire bill without any legal foundation whatsoever, except the sole provision with reference to a criminal action against an officer of a State acting "under color of law," which is fully considered in the recent case of *Screws* v. *U. S* ((1945) 325 U. S. 106), in which there was a sharply divided Court and a strong dissenting opinion. In that case State officers had a prisoner in custody for the alleged theft of a tire and whipped the prisoner to the extent that he died from the beating. The Court held that section 20 of title — applied: That the officers were acting "under color of law" when they administered the injury and were criminally liable under the act; the case was reversed, however, because of a faulty instruction. I submit that these officers were not acting "under color of law" in the sense intended by the statutes and therefore submit, with deference, that the Court erred in applying the facts.

The proposal to have a Federal statute impose a money fine on a subdivision of a sovereign State regarding the negligent enforcement of a State law does not have a semblance of legal sanction or authority in any phase of American jurisprudence. The old England law, as I recall, provided for a penalty on a community for a crime committed therein, to be collected by the Crown; and by like reasoning, perhaps a State of the United States could impose a like penalty on one of its own subdivisions. But certainly the States which created the Federal Government, and then expressly reserved all powers not granted to themselves and to the people, cannot now be subjected to a money fine regarding the use of its own reserved powers unless it consents thereto.

* * * * * * *

Insofar as this measure may pertain to the racial relations in the South, let me make this additional observation: All races are making splendid headway in

the South and are cooperating. We, members of both races, know our problems better than anyone else in the world, and we can work out the best solutions. We are doing that. The better, calmer leaders and thinkers of each race know and have confidence in each other. We do not fear each other. We fear the crank, the outside meddler, and the paid agitators who make their living by stirring up strife and enmity among the races, there and elsewhere. They further benefit themselves by gross misrepresentations, and some of them seek to mislead the Congress. I know these bills are supported by many highly patriotic people; I do not at all question their motives.

I just think they fail to see the problem in its full, true light. I plead for further time for the patriotic leaders of both races in the South to continue their splendid progress without interference or set-back. I believe, and most sincerely submit to this committee, that the progress made by the two races in the South for harmony and concord and progress and mutual benefit for the past 82 years has never been equaled in the history of the world where such large numbers were involved. The problem was made immeasurably greater by reconstruction days. Do not afflict the races with such an artificial and unnecessary burden again.

We must remember we are not dealing with theories nor ethics nor moral questions. We are dealing with a practical problem. We are not establishing rules of conduct to regulate ourselves here in the calm, cloistered walls of the Senate Chamber or in our office building. We are establishing rules of law for the daily conduct of all kinds of people out in the practical affairs of life—in the market places of the cities, on main streets of the small towns, at the cross-roads of the countryside, and everywhere throughout the Nation where people of all kinds and races mix and mingle together in the struggle for a living. One strait-jacket rule, one strict pattern, will not work for the industrial East and the agricultural South. Give us a chance to continue our fine progress in my area.

Senator FERGUSON. Senator Stennis, I appreciate your coming here and giving me your views.

Senator STENNIS. I certainly appreciate the opportunity of being here and discussing it with you.

Senator FERGUSON. Let the record show that at this point the hearings on antilynching legislation are closed, with the exception of filing of statements and substantiating data.

(Whereupon, at 11:50 a. m., the committee recessed.)

APPENDIX

The committee files contain scores of letters, telegrams, postals, and testimonals from private individuals, labor groups, church groups, and citizen organizations recommending passage of antilynching legislation. In the interest of conservation of space and printing costs, the above material is not included in the printed hearings. It does, however, remain as part of the public records of the files of the committee open to the scrutiny of interested parties.

BRIEF OF ATTORNEY GENERAL OF THE STATE OF FLORIDA ON CONSTITUTIONALITY OF S. 1352 AND S. 42, DESIGNATED AS "FEDERAL ANTILYNCHING ACTS"

There is now pending in the Senate of the United States of America S. 1352 and S. 42.

Each of these acts is properly designated as Federal Antilynching Act. A careful study of each of these bills shows clearly that practically all of the provisions of S. 42 are included in S. 1352, which latter act is a great deal broader than the former.

Both of these acts are emphatically bottomed on the provisions of the fourteenth amendment to the Constitution of the United States. S. 1352 goes even further in attempting to justify the act by providing that one purpose is to promote universal respect for, and observance of, human rights and fundamental freedoms for all under the treaty obligations assumed by the United States under articles 55 and 56 of the United Nations Charter.

The assumption by the National Congress that it has the power to enact into law these proposed antilynching bills under either the provision of the fourteenth amendment to the Constitution of the United States or the United Nations Charter is unwarranted; for it must be kept in mind that the individual sovereign States are not creatures of the Federal Government; but, on the contrary, the Federal Government is a creature of the several States and is sovereign only in those fields where express powers have been granted by the States in the Constitution and its amendments, the States remaining sovereign within their own boundaries in all matters of internal concern where they have not expressly relinquished their powers. If this could be written loud enough to sink into the thought of the Members of both House and Senate of our National Legislature, it is believed that a great change would take place in the Congress' growing disposition to make the Federal Government dominate the State governments in so many fields of improper national intervention.

The provision contained in the fourteenth amendment to the Constitution under which the acts are specifically drawn is 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."

Articles 55 and 56 of the United Nations Charter, under which the National Congress assumes to act, are as follows:

"ART. 55. * * * The United Nations shall promote (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

"ART. 56. All members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in article 55."

We will first endeavor to demonstrate that the enactment into law by the National Congress of either of the acts in question would be a most unwarranted

invasion of States' rights under the Constitution, and then we will later show that the provisions of the United Nations Charter could in now way be involved nor form a basis for legislation by Congress when such rights are not given to the Federal Government by express provision of the Constitution of the United States.

S. 1352, being the broader of the two bills and embodying practically all provisions of S. 42, will be considered.

It will be noted that this bill in section 1 thereof makes certain findings and policies. Subparagraph (a) finds that the duty of each State to refrain from—and here the act refers to the fourteenth amendment—depriving any person of life, liberty, or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws, imposes upon each State the obligation to exercise its police powers in a manner which will protect all persons equally without discrimination because of race, creed, color, national origin, ancestry, language, or religion. Such finding is not supported by the fourteenth amendment for the fourteenth amendment is very emphatic in its statement "* * * nor shall any State deprive * * *" and then "* * * nor deny to any person equal protection of the laws. * * *" This clearly indicates that the State shall not deprive by positive action nor deny by positive action the things enumerated in the fourteenth amendment.

This section then emphatically states that the State has by positive action actually deprived a person of life, liberty, or property and equal protection of the laws when the State's inaction has the effect of discriminatory withholding of protection. This finding is attempted to be justified by the statement immediately following when the act finds that a State by the malfeasance or nonfeasance of its officials permits persons not expressly designated as its agents to punish any person for crimes or alleged crimes without trial or other due process and condones such conduct by participating in or facilitating such conduct or by failing to punish either those of its officials who permit such conduct or those guilty of the conduct, effectively deprives the victims of life, liberty, or property without due process of law and denies them equal protection.

How this finding can be justified is a mystery in itself, because it so contorts the positive provisions of the Constitution of the United States as to make the act of one city, county, or State police officer the positive and direct action of the State itself in depriving persons of life, liberty, or property without due process and positively denies to them equal protection of the laws. Such a finding cannot be sustained because the police officers involved owe their duties to the State and not to the Federal Government.

The Constitution and laws of the State of Florida amply define and determine the powers, duties, and liabilities of the State police officers. It is unquestioned that a sheriff or constable in the State of Florida may be suspended by executive order of the Governor on grounds of neglect of duty, incompetency, malfeasance, and misfeasance (Florida Constitution, art. IV, sec. 15). It is also unquestioned that a sheriff or constable for any misfeasance or nonfeasance in office may become liable on his bond or be subjected to a suit for damages by the person or persons injured thereby and he is not relieved from liability for his wrongful acts on the grounds that he is a sheriff or constable (*Holland* v. *Mayes*, 19 So. (2d) 709, 155 Fla. 129).

Chapter 250, Florida Statutes, 1941, provides for the formation of the Florida National Guard. Section 250.38, Florida Statutes, 1941, provides:

"When an invasion or insurrection in the State is made or threatened, or whenever there exists a riot, mob, unlawful assembly, breach of the peace or resistance to the execution of the laws of the State, or there is imminent danger thereof * * * the Governor, or in case he cannot be reached and the emergency will not permit of awaiting his orders, the adjutant general shall issue an order to the officer in command of the body of troops best suited for the duty for which a military force is required directing him to proceed with the troops under him, or as many thereof as may be necessary, with all possible promptness, to suppress the same."

The Governor of the State of Florida, as such, is designated by the laws of Florida as the commander in chief of the militia. Let us assume that a man had been arrested for some heinous crime in some remote section of the State of Florida and was being held by the sheriff of the county; that the sheriff was advised and had reason to believe that a mob was forming for the purpose of taking the prisoner from him and lynching the prisoner. Let us assume further that the sheriff with this apprehension in mind immediately called the Governor of the State of Florida and requested that the National Guard be sent to assist him in protecting and holding the prisoner. The Governor, after considering all

the facts available to him, did immediately order the National Guard to the assistance of the sheriff and the National Guard proceeded by motor trucks to the point directed but before they were able to reach the scene the mob had accomplished its purpose, taken the prisoner and had killed him.

Information was then transmitted to the Attorney General of the United States who immediately ordered an investigation thereof and upon such investigation determined in his own mind that the Governor of the State of Florida had neglected to make "all diligent efforts" to protect the prisoner under section 7 of S. 1352 and instituted criminal proceedings against the Governor of the State of Florida under the provisions of 6 and 7 thereof, on the ground that the urgency of the matter demanded that the troops be sent by airplane for the assistance of the sheriff and not by motor truck. It would then be placed within the power of a jury to convict the Governor of the State of Florida of a felony under this so-called antilynching act, subject him to a fine of $5,000 and imprison him in a Federal penitentiary for a period of 5 years.

In further carrying out the provisions of this act the Attorney General of the United States, in the name of the United States, for the use of the heirs of the decedent instituted civil proceedings under section 8 against county X wherein the sheriff involved held his official position and alleged in the complaint so filed that when the mob gathered and approached the jail wherein the prisoner was being held the only person or persons within the sight or hearing of the sheriff other than the members of the mob were three men. The sheriff called the three men and demanded that they immediately come inside the jail, take guns from the gun rack and assist him in the defense of the prisoner even to the point of being killed by the mob; that two of the three men turned and fled. The complaint demanded of county X $10,000 damages under section 8, providing for compensation by such governmental subdivision to the party lynched if injured and to his heirs if he is killed. This section of the act provides that the county does have a defense but only one defense and that is an affirmative one whereby the county may plead and must prove "by a preponderance of evidence" that not only the officers thereof charged with the duty of preserving the peace but that the citizens thereof when called upon by such officer "used all diligence and all powers vested in them" for the protection of the person lynched. Clearly then the failure of these two cowardly men, as citizens and residents of the county, to accede to the demand of the police officer and to bear arms in defense of a prisoner and either kill or be killed would render the county liable.

Section 23, article V, of the Florida Constitution provides for the election of a constable by the registered voters in each justice district who shall perform such duties and under such regulations as may be prescribed by law.

Section 21, article V, of the Florida Constitution provides that the county commissioners of each county may divide the county into as many justice districts as they may deem necessary.

Section 6, article VIII, of the Florida Constitution provides that the Legislature of the State of Florida shall prescribe for the election by qualified electors in each county certain county officers among which appears "constable."

Therefore a constable is declared by the Florida Constitution to be a county officer. There may be as many as 25 or more justice districts in a county. Each constable is elected only by the qualified electors in the particular justice district in which he seeks office. We therefore have a police officer elected by only a small part of the county yet designated as a county officer.

We will change the demonstration given above and in place of the sheriff we shall have a constable. Under the same act of facts this constable's neglect of duty would impose upon the entire county a judgment of $10,000 which must be paid for by taxation of each taxpayer in the entire county, for a justice district in a county is not a political subdivision of the State.

Article 5 of the amendments to the Constitution of the United States provides, among other things, "no person * * be deprived of life, liberty, or property without due process of law."

Clearly then this antilynching legislation by the National Congress would be totally unconstitutional and null and void for it would unquestionably deprive the other taxpayers in the county of their property without due process of law because the constable would be a public officer elected only by the qualified electors in his particular justice district.

The findings and policy of the act decides what acts constitute a lynching in the following manner:

"Lynching constitutes an organized effort not only to punish the persons lynched but also to terrorize the groups in the community or elsewhere of which the persons are members by reason of their race, creed, color, national origin, ancestry, language, or religion and thus to deny to all members of such groups and to prevent them from exercising the rights guaranteed to them by the Constitution and laws of the United States."

I can conceive of no reasoning by which this finding can be justified for in its actual application it is totally false, for the one lynched may be of English origin, a white man, a Catholic, and speak the English language, so how could the lynching of this man constitute an organized effort to terrorize the groups in the community or elsewhere of which he is a member by reason of race, color, national origin, language, or religion? Certainly there could be no organized effort to terrorize all Americans of English ancestry of the white race who speak the English language and whose religion is Catholic.

This finding is followed by a statement regarding a State's condoning lynching. I cannot understand how a State, as such, could under any circumstances condone an act of this sort when the State itself by its constitutional provisions and its laws expressly prohibits such acts. Finding (b) then proceeds to contradict the other findings of the entire act for finding (b) even departs further from the fourteenth amendment by making the acts of individuals within a State and without the condemnation by the State or its officials a denial of equal protection of the laws and is denial or limitation of human rights and fundamental freedoms. Not so, for this is a question of internal affairs of a State. It is purely a private quarrel between individuals and is punishable under the criminal laws of the State but involves no constitutional provision of either a State or the United States. Finding (c) is to the effect that the law of nations requires that every person be secure against violence to himself or his property by reason of his race, creed, color, national origin, ancestry, language, or religion. The so-called law of nations containing this provision cannot under any form of reasoning constitute a grant of power by the States to the Federal Government upon which the National Congress could pass legislation that directly conflicts with positive provisions in the Constitution. If this were the case it would give the power to Congress, by treaties with foreign nations, to completely nullify and destroy the Constiution of the United States and to delegate to itself powers as great as those possessed by any totalitarian nation on earth. It could through its treaties completely destroy our form of government by giving to itself the power to enact any law that it might see fit to enact without any regard whatsoever to the Constitition.

Section 3 provides that it is the right of every citizen to be free from lynching. With this statement and with this section of the act we agree. It is no more than a statement of what has always been the law and of which every person, even a child, is familiar.

Section 4 defining a lynch mob defines it as "any assemblage of two or more persons" who commit certain acts as provided therein or attempts to commit these acts of violence upon any person or persons or on his or their property because of his or their race, creed, color, national origin, ancestry, language, or religion. Such a definition would unquestionably open the way for a flood of claims simply because the victim lynched or attempted to be lynched or who had his property damaged under the circumstances therein described was a Negro, a Jew, a German, or a member of any other race; because he was a Catholic, a Baptist, a Methodist, or a member of any other creed; whether he spoke the Jewish language, German, Italian, or English. Who is to decide whether such act or attempt was done because of these facts? Certainly it would be an erroneous assumption to assume that because the person was a Negro that this was the reason for lynching or attempted lynching.

Section 6 of the act provides for the punishment for failure to prevent a lynching. There is no earthly way under this provision of the act to determine what constitutes "all diligent efforts" to prevent a lynching. What might be "all diligent efforts" in the mind of one man might be a great deal different than that in the mind of another. No yardstick by which to measure such efforts is provided. This provision is so uncertain and so indefinite in its terms and in is provisions that it is impossible of enforcement. It cannot be judicially construed to mean reasonable effort for its very terms contradict this construction. Who know what constitutes "all diligent efforts" in the mind of the police officer upon whom is imposed the duty to protect a prisoner? In his own mind he might in all honesty believe that the course that he has taken and the efforts

that he has expended in protecting a prisoner constituted every reasonable effort in that behalf.

In the mind of one man "all diligent efforts" might well mean that it was the duty of the officer so charged to defend the prisoner even to the point of laying down his life in his defense. In very few, if any, of such cases could the officer accomplish more than the killing of one or two of the mobsters and being killed himself. Mobs formed with the purpose of lynching an individual are uncontrollable and beyond all reason and are always heavily armed. To expect an officer charged with the duty of protecting a prisoner to attempt singlehanded to fight off a mob of 10, 20, or 30 heavily armed men who will tolerate no interference with their plan would be expecting that of the officer which is far beyond his duty to society and it has been so held by the courts of last resort of practically every State in the Union and by the Supreme Court of the United States.

Section 8 of the act is just another attempt to do indirectly that which cannot be done directly. It attempts to make the acts of a police officer in a city or town the act of the State itself under the apparent theory that each governmental subdivision of the State is the State. To come within the purview of the fourteenth amendment it must be clear that the State as such deprives the person of life, liberty or property without due process of law or denies to any person within its jurisdiction the equal protection of the law. There is no provision in the Constitution under which the action of a police officer of a town or city could be considered as the positive action of the State itself in depriving a person of life, liberty, or property without due process of law or as denying equal protection. The case of *United States Mine Workers* v. *Chafin*, (286 Fed. 961) in no uncertain terms sets this question at rest.

Section 8 (2) provides among other things that when certain facts have occurred in conflict with the provisions of the act the Attorney General shall bring and prosecute the action in the name of the United States for the use of the real party in interest against the political subdivision of the State. In the State of Florida a county is immune from civil actions for damages arising in tort. To justify the provisions of this act the bill, in effect, alleges that the action of the officers of the county, and in fact positively so holds, is the act of the State itself and provides for a suit against the political or governmental subdivision of the State which includes counties and is in effect a suit against the State. Yet, article 11 of amendments to the Constitution of the United States provides that the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any foreign state. This lack of power cannot be cured under the flimsy excuse that the suit is brought in the name of the United States, for it is brought in this manner, by the express terms of the act, for the use and benefit of the real party or parties in interest which might or might not be a citizen or citizens of another State or a citizen or subject of a foreign state.

S. 42 is almost entirely embodied within S. 1352 and any discussion of the shorter act would serve no useful purpose for the above would be applicable to this act as well as to the longer one.

We cannot, therefore, escape the conclusion that either of these acts would be unconstitutional and in fact would be no act at all for either of them would be a direct invasion of States rights as retained by the 48 States of the Union and not relinquished to the Federal Government. It would be an exercise by the Congress of the United States of America of powers not conferred upon it by the Constitution and would in fact usurp the powers of the individual States expressly reserved to them and each of them.

J. TOM WATSON,
Attorney General.
J. LUTHER DREW,
Assistant Attorney General.

BRIEF FOR THE ATTORNEY GENERAL OF MISSISSIPPI ON BEHALF OF THE PEOPLE OF THE SAID STATE IN OPPOSITION TO SENATE BILL NO. 1352, EIGHTIETH CONGRESS, FIRST SESSION, KNOWN AS THE FEDERAL ANTILYNCHING LAW

It is the contention and belief of the attorney general of Mississippi that the above-named bill, known as the Federal Antilynching Act, is unconstitutional because no grant of power to the Federal Government is contained in the Constitution of the United States granting power to punish crimes committed in the

several States. Also, that the said bill is unconstitutional because it seeks to impose penalties and liabilities on the States or their subdivisions when there is no grant in the Federal Constitution authorizing such act. The bill is unconstitutional further in that it undertakes to authorize suits against the States or their subdivisions contrary to the eleventh amendment of the Constitution of the United States. It is unconstitutional because it undertakes to create liberties and the rights of action in favor of private persons for private injuries when there is no such power vested in the Federal Government.

(*a*) American system of government with its divisions of power between the States and the Nation and by securing the rights of citizens for the oppression of citizens by the Government makes this the best government in the world

The bill ignores the distinction between the powers reserved to the States on the one hand and powers delegated to the Federal Government on the other hand. In the beginning of our Government, the Thirteen Original States were independent of each other and each had full powers of government over all matters within its Territories and each State was a sovereign vested with all the powers of government unless restrained by its own constitution and charter of government. There was an attempt to give the Federal Government powers under the Articles of Confederation but the National Government had neither the power of taxation of citizens nor the right or power to equip armies or civil officers who would have any power to coerce a State or the citizens thereof.

When the Constitutional Convention met at Philadelphia in 1787, to frame a constitution to create a National Government with proper powers as such, and recognized the necessity of a national Government with limited powers only pertaining to international or interstate business relations and transactions while at the same time it recognized that the rights of local government should be secured to the people within the limits of the States then existing or thereafter to be created under the provisions of the National Government. It was understood by the founders of our Government that the National Government would only have powers delegated to it by the Constitution and that all other powers than those delegated were retained by the States and that the National Government could make no law or exercise any power except those actually delegated to it by the Constitution or such implied powers as might be found necessary and proper from the exercise of the powers actually delegated. In the original Constitution powers to be exercised by the National Government were specifically granted in article 1, section 8, clauses 1 through 18. In section 9 of article 1 certain specific prohibitions were provided, being named therein, forbidding certain powers mentioned therein from being exercised by the general or Federal Government and these were known as prohibitions on the National Government.

In section 10 of article 1 of the original Constitution certain laws were prohibited from being enacted by the States. By these prohibitions it was intended to reserve to the people all power over such subjects, each government being prohibited to act in reference to said matter unless and until a constitutional amendment should be adopted authorizing such action to be taken by the Government.

The Federal Government secured a few rights to the people but had no Bill of Rights such as those contained in the first 10 amendments to the Constitution adopted by said amendments which were shortly ratified after the Constitution originally adopted was ratified. In many of the ratifying conventions the absence of the Bill of Rights was commented on and it was urged by many that the Constitution should not be ratified without such a Bill of Rights to control the National Government and its activities. The proponents of ratification insisted that Congress could make no law except as specifically authorized by the powers granted to the National Government by the Constitution. It was promised by many who sought ratification that such Bill of Rights would be proposed as amendments and ratified and the ratification was secured by these promises evidenced by resolutions of the conventions pledging the enactment of a suitable Bill of Rights. The debates in the Venton of Virginia were able and heated and the forces of ratification and the force of those against ratification were nearly equally divided. Shortly after the original Constitution was ratified the 10 amendments were proposed and carried. By article 10 of which amendments it was provided that all powers not granted to the United States by the Constitution or prohibited the several States by the Federal Constitution were reserved to the States or to the people. The effect of this amendment reserved to the States all powers not especially granted to the United States Government and that the Federal Government could not enact laws for the general policing of the States. As to these reserved powers, the States had full power of legislation subject only to the prohibitions contained in the Federal Constitution and in the Constitution of the States themselves withholding from the legislative bodies powers which it was believed should not be exercised by the legislatures of the States themselves. Also the National Government and the governments of the several States further divided power by giving to three separate departments of Government particular powers. The powers in each case were classified: First, legislative; second, executive; and third, judicial. The whole purpose was to secure a government of laws as against the government by caprice or whim or as it is sometimes expressed, "a government by men." When these provisions of our system have been carefully studied or are fully known or observed by those in authority, we have a government founded on the consent of the people and by the constitutional powers termed the Bill of Rights, we have our liberties safeguarded from violation. No other government protects its people so fully as our own It is complex but safe. It takes study and research to understand fully the great Government that we have.

That consent of the people for such a government being manifested by specific provisions of the Constitution, those who exercise powers of government should observe with the utmost care and caution the provisions of the Constitution. They should not undertake to set them aside or violate them to meet an imaginary or real evil except by those authorized by the constitutional system to deal with it. The enactment of laws regulating transactions between separate persons living in our organized society or generally known as the police powers, and are, so far as the States are concerned, governed by the local government. In 16 CJS 125, it is said:

"The Federal Constitution is a grant of powers, and Congress possesses only such powers as are granted expressly or by implication. Construction should be neither unduly strict nor loose, but should be fair and reasonable.

"In respect of internal affairs, the Federal Government derives its authority from the Constitution of the United States. The Constitution is a grant or delegation of power, and in general the Federal Government is one on enumerated and delegated powers, and possesses only such powers as are conferred by the Constitution either expressly or by implication."

Thus, Congress possesses only such powers as are granted by the Constitution. A power enumerated and delegated to Congress is, however, comprehensive and complete without other limitations than those found in the Constitution itself. The powers which are implied under the Constitution are such as are necessary and proper for the exercise of a power expressly granted. Governmental power is not delegated by implication to the National Government except as stated above. All powers not so delegated belong to the States and the States alone can exercise such power. The prohibition of all power to the States does not, by implication, grant that or those powers on the Federal Government. Where the States have not exercised a power belonging to them the National Government cannot supply by its enactment such laws.

After the Civil War, the thirteenth, fourteenth, and fifteenth amendments were adopted by the States as resisting prohibitions on State action, but not granting the Federal Government the power prohibited to the States. Where a State does not pass or enforce a law or laws, the power remains unexercised.

The State of Mississippi has a statute prohibiting murder or any other offense against society and a lynching where death occurs is murder under the State law contained in section 2215 and 2217 of the Code of 1942. It does not matter how many persons take active part in murdering a man for each are guilty of the crime of murder under said act. Where murder is committed in the State the penalty is either death or life imprisonment if the party is convicted in the courts of the State. An agreement or conspiracy to commit a crime is prohibited by section 2056 of the Code of 1906. This section is effective whether the conspiracy is carried out or not.

Under section 1195, Code of 1942, every person who shall be an accessory to any felony, before the fact, shall be deemed and considered a principal and shall be indicted and punished as such and this shall be whether the principal has been previously indicted for a crime and convicted or not. This makes accessories before the fact by common law a principal and punishable to the same extent as if he had personally committed the murder or other crime.

By section 2017, of the Code of 1942, every person who shall design and endeavor to commit an offense and shall do any overt act toward the commission thereof but shall fail therein or shall be prevented from committing the same shall be punished as follows: If the offense attempted to be committed be capital, such offense shall be punished by imprisonment in the penitentiary not exceeding 10

years and if the offense attempted be punishable by imprisonment in the penitentiary or by fine and imprisonment in the county jail, the attempt to commit such offense shall be punished for a period or for an amount not greater than is prescribed for the actual commission of the offense so attempted.

It will be seen from these sections that Mississippi has statutes prohibiting every phase of the crime called lynching. I presume that every other State in the Union has statutes covering every phase of a lynching similar to our statutes in this State. There is therefore no necessity for a Federal enactment even if the Federal Government had the power to enact or make such enactment effective; which it has not.

If the above-mentioned Federal antilynching law is attmpted under the fourteenth amendment, it will be noted that the language of the fourteenth amendment is that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The language is a prohibition on the State and not a grant of power to the National Government.

Shortly after the fourteenth amendment became effective, it was contended in a number of cases that under the power to enforce the amendment by appropriate legislation that the Federal Government could enact under its own authority laws to punish the persons denying the privileges and immunities of citizens. This contention was especially denied by the Supreme Court of the United States in what is known as the civil rights case (109 U. S. 3, 27 L, Ed. 835), where the matter was fully discussed and decided that the Federal Government was not granted the power by virtue of this amendment to enact laws to punish offenses of one individual against another or to make general laws within the States to prevent specific crimes by individuals. On page 839 of the L. Ed. after quoting the provision of the fourteenth amendment, referred to, it is said:

"It is State action of a particular kind 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 and void and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers, executive or judicial, when these are subversive of the fundamental rights specied in the amendment. Positive rights and privileges are undoubtedly secured by the fourteenth amendment; but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must, necessarily, be predicated upon such supposed State laws or State proceedings, and be directed to the correction of their operation and effect. A quite full discussion of this aspect of the amendment may be found in *U. S.* v. *Cruikshank* (92 U. S. 542), *Va.* v. *Rives* (100 U. S. 339)."

Further on in the opinion on page 840, the Court said:

"And so in the present case, until some State law has been passed or some State action through its officers or agents has been taken, adverse to the right of citizens sought to be protected by the fourteenth amendment, no legislation of the United States under said amendment, nor any proceeding under such legislation, can be called into activity; for the prohibitions of the amendment are against State laws and acts done under State authority. Of course, legislation may and should be provided in advance to meet the exigency when it arises; but it 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. It is absurd to affirm that, because the rights of life, liberty, and property, which include all civil rights that men have, are, by the amendment, sought to be protected against invasion on the part of the State without due process of law, Congress may, therefore, provide due process of law for their vindication in every case; and that, because the denial by a State to any persons, of the equal protection of the laws, is prohibited by the amendment, therefore Congress may establish laws for their equal protection. In fine, the legislation which Congress is authorized to adopt in this behalf is not general legislation upon the rights of the citizen, but corrective legislation, that is, such as may be necessary and proper for counteracting such laws as the States may adopt or enforce, and which, by the amendment, they are prohibited from making or enforcing, or such acts and proceedings as the States may commit or take, and which, by the amendment, they are prohibited from committing or taking."

On the same page in the second column, the court further said:

"If this legislation is appropriate for enforcing the prohibitions of the amendment, it is difficult to see where it is to stop. Why may not Congress with equal show of authority enact a code of laws for the enforcement and vindication of all rights of life, liberty, and property? If it is supposable that the States may deprive persons of life, liberty, and property without due process of law, and the amendment itself does suppose this, why should not Congress proceed at once to prescribe due process of law for the protection of every one of these fundamental rights, in every possible case, as well as to prescribe equal privileges in inns, public conveyances, and theaters? The truth is, that the implication of a power to legislate in this manner is based upon the assumption that if the States are forbidden to legislate or act in a particular way on a particular subject, and power is conferred upon Congress to enforce the prohibition, this gives Congress power to legislate generally upon that subject, and not merely power to provide modes of redress against such State legislation or action. The assumption is certainly unsound. It is repugnant to the tenth amendment of the constitution, which declares that powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

On the same page in the second column the court further said:

"The law is clearly corrective in its character, intended to counteract and furnish redress against State laws and proceedings and customs having the force of law, which sanction the wrongful acts specified."

On page 841, in the second column the court further said:

"In this connection 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. An individual cannot deprive a man of his right to vote, to hold property, to buy and to sell, to sue in the courts or to be a witness or a juror; he may, by force or fraud, interfere with the enjoyment of the right in a particular case; he may commit an assault against the person, or commit murder, or use ruffian violence at the polls, or slander the good name of a fellow citizen; but, unless protected in these wrongful acts by some shield of State law or State authority, he cannot destroy or injure the right; he will only render himself amenable to satisfaction or punishment; and amenable therefor to the laws of the State where the wrongful acts are committed. Hence, in all those cases where the Constitution seeks to protect the rights of the citizen against discriminative and unjust laws of the State by prohibiting such laws, it is not individual offenses, but abrogation and denial of rights, which it denounces, and for which it clothes the Congress with power to provide a remedy. This abrogation and denial of rights, for which the States alone were or could be responsible, was the great seminal and fundamental wrong which was intended to be remedied. And the remedy to be provided must necessarily be predicated upon that wrong. It must assume that in the cases provided for, the evil or

wrong actually committed rests upon some State law or State authority for its excuse and perpetration."

A careful study of this case should convince any reasonable person that the powers which Congress may exercise is not the power to make enactments prohibiting individual conduct but the power to make the prohibition on the State is effective; and this has been done by giving the right to appeal from the State court, taking such decisions to the Supreme Court of the United States where that Court may review the State's decision and if it finds that the State law conflicts with the fourteenth amendment then that law may be stricken down and declared of no effect. In other words, State action can be set aside by the Federal courts on appeal from the State courts. The Federal law gives the right of appeal to any person whose rights are invaded by a State law or by officers acting under State law and clothed with the power to act for the State. Federal Government does not punish individuals for crimes committed in the State nor does it punish or prohibit private persons for violating civil rights or other rights of another private person.

In the case of *U. S.* v. *Harris* (106 U. S. 629; 27 L. Ed 290), the Court had occasion to deal with the subject and held that section 5519 of the Revised Statutes making it a criminal offense for two or more persons in a State or Territory to conspire to deprive any person of the actual protection of the laws of the State is unconstitutional. That the statute therein involved was broader than is warranted by the Constitution. On page 293 of the Law Edition the Court said:

"It is, however, strenuously insisted that the legislation under consideration finds its warrant in the first and fifth sections of the fourteenth amendment The first section declares 'All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

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

"It is perfectly clear, from the language of the first section, that its purpose also was to place a restraint upon the action of the States. In the *Slaughter-House Cases* (16 Wall. 36 (83 U. S. XXI., 394)), it was held by the majority of the Courst, speaking through Mr. Justice Miller, that the object of the second clause of the first section of the fourteenth amendment was to protect, from the hostile legislation of the States, the privileges and immunities of citizens of the United States, and this was conceded by Mr. Justice Field, who expressed the views of the dissenting Justices in that case. In the same case, the Court, referring to the fourteenth amendment, said that 'If the States do not conform their laws to its requirements, then, by the fifth section of the article of amendment, Congress was authorized to enforce it by suitable legislation.'

"The purpose and effect of the two sections of the fourteenth amendment abovequoted were clearly defined by Mr. Justice Bradley in the case of *U. S.* v. *Cruikshank* (1 Woods 316), as follows: 'It is a guaranty of protection against the acts of the State government itself. It is a guaranty against the exertion of arbitrary and tyrannical power on the part of the government and legislature of the State; not a guaranty against the commission of individual offenses; and the power of Congress, whether express or implied, to legislate for the enforcement of such a guaranty does not extend to the passage of laws for the suppression of crime within the States. The enforcement of the guaranty does not require nor authorize Congress to perform "The duty that the guaranty itself supposes it to be the duty of the State to perform and which it requires the State to perform.'"

"When the case of *U. S.* v. *Cruikshank* came to this Court, the same view was taken here. The Chief Justice, delivering the opinion of the Court in that case, said: 'The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property without due process of law, or from denying to any person the equal protection of the laws; but this provision does not add anything to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. The duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the States, and it remains there. The only obligation resting upon the United States is to see that the Sates do not deny the right. This the amendment guarantees and no more. The power of the National Government is limited to this guaranty' (92 U. S. 542 (XXIII, 588))."

In the case of *U. S.* v. *Butler* (297 U. S. 188; 80 L. Ed. 477–499, syllabus 6), the Court announced:

"The Federal Constitution is the supreme law of the land, ordained and established by the people, and all legislation must conform to the principles it lays down."

In the seventh syllabus, it announced:

"The function of the courts when an act of Congress is appropriately challenged as not conforming to the constitutional mandate is merely to ascertain and declare whether the legislation is in accordance with or in contravention of the provisions of the Constitution, and not to approve or condemn its policy."

It was held in syllabus 8:

"The Federal Government is one of delegated powers; and has only such as are expressly conferred upon it and such as are reasonably to be implied from those granted."

It was held in the ninth syllabus:

"Power to provide for the general welfare independently of the taxing power is not conferred by the provision of article I, section 8, clause 1, of the Federal Constitution, empowering Congress 'To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States,' but the only thing granted is the power to tax for the purpose of providing funds for payment of the Nation's debts and making provision for the general welfare."

In the case of *U. S.* v. *A. L. A. Schecter Poultry Corp.* (295, 79 L. Ed. 1570, 97 A. L R 947) it was held by the Supreme Court of the United States that extraordinary conditions do not create or enlarge constitutional power and do not justify governmental action outside the sphere of constitutional authority. It was held that the powers of the National Government are limited to those granted by the Constitution. In syllabus 3 of this case, the Court said:

"Legislative power is unconstitutionally delegated by the provisions of section 3 of the National Industrial Recovery Act of June 16, 1933, authorizing the making of codes for the government of trades and industries by or with the approval of the President of the United States, without setting up any standards aside from the statement of the general aim of rehabilitation, correction, and development of trades and industries."

In *Greenwood Co.* v. *Duke Power Co.* (81 Fed. (2d) 986), it was held that officers acting under authority of Congress do not encroach on powers reserved to States.

In *Panama Refining Co.* v. *A. D. Ryan, and others* (79 L. Ed. 446; 293 U. S. 388–448), it was held in the fourth syllabus:

"Legislative power is unconstitutionally delegated by the provisions of section 9 (c) of title I, of the National Industrial Recovery Act of June 16, 1933 (48 Stat. at L. 195, 200, 15 U. S. C., title 1, sec. 709 (c)), authorizing the President to prohibit under penalty of fine or imprisonment or both, the transportation in interstate and foreign commerce of petroleum and the products thereof, produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by the duly authorized agency of a State, but containing no definition of the circumstances and conditions in which the transportation is to be allowed or prohibited."

In the fifth syllabus, it was held:

"A delegation of legislative power to an administrative officer is not brought within the permissible limits of such delegation by prescribing the public good as the standard for the administrative officer's action."

In the same case, in syllabus 9, it was held:

An Executive order must, in order to satisfy the constitutional requirement of due process, show the existence of the particular circumstances and conditions under which the making of such an order has been authorized by Congress."

In Sixteen Corpus Juris Secundum, 130, 269 (b), it is stated:

"As shown in greater detail, infra, sections 438, 505, 568, the provisions of the fourteenth amendment prohibiting the making or enforcing of laws which abridge privileges or immunities, the deprivation of life, liberty, or property without due process of law, and the denial of the equal protection of the law refer to State action or legislation exclusively, including in general the instrumentalities and agencies employed in the administration of State government, and do not refer

to the action of private individuals, nor protect individual rights from individual invasions."

It will be seen from a consideration of these authorities that it is not within the power of Congress to enact policies, legislation, or to regulate the conduct of persons within the States. Of course, in Territories of the United States not formed into States, the Federal Government has all the power that a State has within the State limitations. When Congress admits certain Territory to statehood, the new State has all the powers that other States have and that the Original Thirteen States had when the Constitution was ratified.

I submit that the Senate bill referred to is so indefinite in its terms that it would deny due process of law to citizens and governmental subdivisions because the act does not define with sufficient definiteness what constitutes a crime under the act. In order for an act of Congress or any other law to be valid, the terms of the law must be capable of being understood as to what acts are prohibited or what rights are granted by the act, so that a person would not have to guess what the law meant In other words, the law must be capable of being understood when the rules of statutory construction are brought into play.

In *United States* v. *L. Cohen Grocery Company* (255 U. S. 81; 65 L. ed. 516) it was held that Congress, in attempting as it did in the Lever Act of August 10, 1917, "To punish criminally any person who willfully makes 'any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries' * * *."

On page 520 of the Sixty-fifth Law Edition Report, the Court said:

"Therefore, because the law is vague, indefinite, and uncertain, and because it fixes no immutable standard of guilt but leaves such standard to the variant views of the different courts and juries which may be called on to enforce it, and because it does not inform the defendant of the nature and cause of the accusation against him, I think it is constitutionally invalid, and that the demurrer offered by the defendant ought to be sustained."

This case cites a number of other authorities upon the proposition of the necessity of statutes being definite and capable of being understood. (See *Kennington* v. *Palmer* (255 U. S. 100; 65 L. ed. 528); *Connaly* v. *General Construction Company* (70 L ed. 322; 269 U. S. 385), with the case note appended to the Law Edition Report of the case upon the subject of vagueness and indefiniteness of a statute and rendering them unconstitutional.) When this authority and the case-note authority are applied to the bill involved here, it is clear that no definite acts are named or set forth with certainty as to make it clear and certain.

I am therefore of the opinion that the terms of the act being indefinite and uncertain, the act, if passed, would be void.

I submit in the next place that the act is unconstitutional in that it undertakes to create rights of private persons against the State and its governmental institutions, and to give private citizens the right to bring suit against such governmental subdivisions and the State which violates the eleventh amendment, which provides:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state."

Under this section a State cannot be sued without its consent (*Stone* v. *Interstate Natural Gas Company*, 103 Fed. (2d) 544, affirmed in 308 U. S. 522; 84 L. Ed. 442; 60 S. Ct. 292). There are numerous authorities that could be cited to sustain this proposition, but I deem it unnecessary to go further because it has often been held that a State, even where it consented to be sued, could withdraw that consent even after the obligation had been incurred.

I submit that the proposed statute is unconstitutional because it undertakes to authorize the Attorney General of the United States to bring suit for the benefit of private persons for personal injuries or the violation of personal rights and there is no constitutional authority for the Attorney General, as such, to bring a suit against the State for violation of personal rights or for the redress of personal injuries, and Congress has no power to authorize the State or its subdivisions to be sued in such a case without the consent of the State expressly given, and Congress has no right or power to coerce or penalize a State or its subdivisions for failure to enact any law committed to the State under the division of powers between the State and the Nation. Congress has no power by an act of Congress to create a right of action against the State or any of its subdivisions. The same being prohibited by the eleventh amendment.

Furthermore, I submit that the proposed bill is unjust, unfair, and if permitted to become a law by Congress and the Federal court it would wholly disrupt the constitutional system of government. It would authorize the Congress to absorb all the powers belonging to the States and reserved to them by the tenth amendment. In closing this brief, I desire to call attention to the splendid speech of Senator George appearing in volume 83, part 1, page 964, made in 1938, against a similar bill then pending in Congress. Judge George had long judicial experience in the State of Georgia; being for a time a member of the State supreme court and being a learned jurist whose opinion has great weight. I also desire to call attention to a speech made by Judge John R. Tyson in 1922 on what is known as the Dyer antilynching bill. Judge Tyson was also a jurist of great ability and had served in courts of original jurisdiction and on the Alabama Supreme Court, which speech appears in volume 62, part 2, page 1351, Congressional Record, and delivered January 18, 1922, which is a valuable contribution to the discussion of the division of powers between the States and the Nation. I also desire to call attention to the speech of Senator Pepper, of Florida, volume 83, part 1, page 1033, of the Congressional Record, delivered January 25, 1938, in opposition to a bill similar in most respects to the present bill. I desire to call attention to the speech of Senator Shephard in volume 83, part 1, Congressional Record, page 1168, on a similar bill then pending in the Congress, and also the speech of Senator Kyne made in 1938, same volume of the Congressional Record, page 1197. I also desire to call attention to a speech delivered by Congressman Ross Collins, January 12, 1922, volume 62, Congressional Record, part 2, page 1134, et seq. These fine discussions of the question involved in the present bill so far as principles are concerned and bills on which they were made being similar to and for the same purpose that the present one is sought to be enacted by its sponsors.

There is no greater need for vigilance and learning on the part of our Senators and Representatives than when a law is proposed that would affect the division of powers between the State and Federal Governments and the wisdom of adhering to the splendid system of government which our Constitution gives us, and the right of citizens thus secured should be maintained unimpaired and neither the State government nor the National Government should invade the field of legislation properly belonging to the other government. This is especially true as to Senators who have not only great legislative power but whose counsel must be had in making treaties with other governments and who participate with the executive department in selecting the officers in the executive and judicial departments of our Government, which great powers so necessary to the security and safety of our Government should be understood and respected and maintained by those representing us in the highest deliberative body in the world.

Respectfully submitted.

GREEK L. RICE,
Attorney General.
GEO. H. ETHRIDGE,
Assistant Attorney General.

ANTILYNCHING

Existing bills

[Briefed and compared by sections]

S 42—Introduced by Senator Hawkes, Jan. 6, 1947	S. 1352—Introduced by Senators Wagner and Morse, May 27, 1947	S. 1465—Introduced by Senator Knowland, June 18, 1947
1. Act enacted as part of congressional power to enforce ourteenth amendment. To assure by States under the amendment equal protection and due process to all persons charged with or convicted of any offense.	1. Findings and policy: (*a*) Duty of States to refrain from depriving persons of life, etc., without due process and from denying persons equal protection of laws Duty is breached when a State's inaction is a withholding of protection. When a State permits a lynching (malfeasance or misfeasance of its officials) and condones it by participation, facilitation, or failure to punish lynchers, it denies due process and equal protection. Lynching besides a punishment is also a weapon to terrorize a minority and thus deny rights under the Constitution. Condonance by the State gives the color of State's authority to the acts of the lynchers. (*b*) State persons denied due process and equal protection because of race, color, etc., are denied their human rights and freedoms. (*c*) Law of nations requires a person be free from violence because of race.	1. Purpose to enforce the fourteenth amendment to assure under it protection to United States citizens and equal protection of the laws and due process to all within the jurisdiction of the several States A State has denied lynchees equal protection and due process when it fails, neglects, etc, to protect against lynching or seizure followed by lynching.
NOTE —No similar provision.	2. This act needed to do the following (a) Enforce article XIV, sec. 1 of the Constitution amend. (*b*) Observe human rights and freedoms without regard to race, etc, in accordance with United States treaties under arts 55 and 56 of the United Nations Charter (*c*) Define and punish offenses against the law of nations.	NOTE.—No similar provision.
NOTE.—No similar provision.	3 Right to be free from lynching is a right of citizens of the United States and is in addition to their States' rights.	NOTE —No similar provision.
2 Defines "mob" and "lynching" 3 or more. NOTE —Similar to others but lacking reference to race, color, etc.	4. Lynch mob defined as assemblage of 2 or more (*a*) to commit violence upon persons or property because of race, etc, or (*b*) exercise by violence punishment over any United States citizen in custody or suspected (charged or convicted) of any crime with the purpose of preventing apprehension (trial or punishment) by law of such citizen, or imposing a punishment not authorized by law. Violence by a lynch mob shall be lynching.	2. "Mob" defined as assemblage of 3 or more to exercise without law by physical violence any punishment over those in custody of peace officers or those charged (suspected or convicted) with any crime for the purpose of preventing their apprehension (trial or punishment). "Lynching" defined as such action above which constitutes injury or death. Lynching shall not include violence between gangsters or that arising out of labor disputes.
NOTE —No similar provision.	5. Lynchers, instigators, and inciters, etc., punished by fine not over $10,000 and/or 20 years in jail.	NOTE.—No similar provision.
3 Liability of those charged with the duty or possessing the authority of protecting lynchees which they neglect or refuse to make diligent efforts to protect. Liability of custodians of lynchees. Liability of those possessing the authority to apprehend, keep in custody or prosecute members of lynch mob Penalty Not exceeding 5 years or $5,000 or both	6. State officials who are charged with the duty or possess the authority to prevent lynching (and neglect, etc) and shall have custody of lynchees and willfully neglect to protect) and neglects to apprehend lynchers shall be fined not over $5,000 and/or imprisoned not over 5 years	3. Liability of those charged with the duty or possessing the authority to protect lynchees and neglect to do so; custodians of lynchees and those charged with the duty of apprehending lynchers are liable for neglect Penalty: Fine not over $5,000 and/or 5 years imprisonment.
4. Provision for the Attorney General to investigate violations of the act.	7. Attorney General shall investigate violations of this act on information under oath.	4. Attorney General shall investigate violations of this act on information under oath.
5 (*a*) Civil liability of the State governmental subdivision. Negligence in its duty. To each injured or lynched damages between $2,000 and $10,000. Limited to 1 judgment against 1 subdivision.	8. (1) Governmental subdivisions of States are responsible for lynchings Responsible if seizure took place within their territory. Civil liability is between $2,000 and $10,000 to lynchees or next of kin. Affirmative defense when State officers prove by a preponderance of evidence they used all diligence to protect lynchees. One judgment will bar proceedings against other subdivisions.	5. (1) through (3) same as sec. 8 (1) through (3) of S. 1352.
(*b*) Jurisdiction and venue. United States district court for the judicial district of which the defendant governmental subdivision is a part Optional for the Attorney General to sue in the name of the United States for the real party in interest or by claimants counsel. No prepayment of costs. Judgment enforced by any process available under the State law for the enforcement of any other monetary judgment. Officers refusing to comply with court order to enforce judgment are guilty of contempt. Cause of action survives lynchee's death to next of kin. (Laws of State intestate distribution.) Judgment exempt from creditors' claims.	(2) Civil suits under this section instituted in the United States district court for the judicial district of which defendant governmental subdivision is a part. Attorney General may sue in name of United States for real party in interest or claimant by private counsel In any event without prepayment of costs Judgment enforced by any process available under the State law for such enforcement against a governmental subdivision. Any official refusing to comply with court order enforcing judgment is guilty of contempt Cause of action survives to next of kin. (Intestate distribution). Judgment free from claims of creditors.	
(*c*) Judge before whom suit is instituted may order it tried in any district.	(3) Judge of United States district court before whom suit instituted may designate any place in such district for trial Proviso Not triable within territory limits of the defendant governmental subdivision.	
(*d*) Prima facie evidence of liability when (1) local officers after timely notice fail to protect or (2) apprehension of danger of mob violence is general or any circumstance from which the trier of fact might reasonably conclude that the State subdivision had failed to use reasonable diligence to protect.	NOTE —No similar provision.	NOTE.—No similar provision.
NOTE —No similar provision.		
6. Severability clause.	9. Places transportation of lynchees under the Federal Kidnaping Act.	6. Places transportation of lynchees under the Federal Kidnaping Act.
NOTE.—No similar provision.	10. Severability clause.	7. Severability clause.
	11. Short title "Federal Antilynching Act."	NOTE.—No similar provision.

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THE LIBRARY OF CONGRESS,
January 14, 1948.

Memorandum.
To: Senate Judiciary Committee.
From: Federal Law Section.
With reference to: Section 5 of S. 42, 80th Congress, and section 8 of S. 1352, 80th Congress: Can Congress, in the exercise of its Constitutional powers, enact a law creating civil liability on the part of governmental subdivisions of a State for acts of omission, as well as acts of commission, on the part of police authorities which result in lynchings?

Since January 1900 nearly 200 so-called antilynching bills have been introduced in Congress. Most of these bills follow a general pattern in defining lynching and providing for severe penalties for aiding or permitting that act of violence. Many, including S. 42 and 1352 of the 80th Congress, provide further that a governmental subdivision of a State whose officers have been lacking in diligence shall be liable to the mob victim or his next of kin and suits for this purpose shall be brought in a United States district court by the Attorney General or may be brought by counsel retained by the party in interest. That the State itself may give such a remedy against the political subdivision has been decided by the Supreme Court and numerous State courts. In upholding the validity of an Illinois act requiring municipalities to indemnify the owners of property for damages occasioned by mobs and riots, Mr. Justice Lurton stated, in *City of Chicago* v. *Sturges* (1911) 222 U. S. 313, 323:

"The policy of imposing liability upon a civil subdivision of government exercising delegated police power is familiar to every student of the common law. We find it recognized in the beginning of the police system of Anglo-Saxon people. Thus, 'The Hundred,' a very early form of civil subdivision, was held answerable for robberies committed within the division. By a series of statutes, beginning possibly in 1285, in the statutes of Winchester, 13 Edw. I, c. 1, coming on down to the 27th Elizabeth, c. 13, the Riot Act of George I (1 Geo. I, St. 2) and Act of 8 George II, c. 16, we may find a continuous recognition of the principle that a civil subdivision entrusted with the duty of protecting property in its midst and with police power to discharge the function, may be made answerable not only for negligence affirmatively shown, but absolutely as not having afforded a protection adequate to the obligation. Statutes of a similar character have been enacted by several of the States and held valid exertions of the police power. *Darlington* v. *Mayor &c. of New York*, 31 N. Y. 164; *Fawvia* v. *New Orleans*, 20 La. Ann. 410; *County of Allegheny* v. *Gibson &c.*, 90 Pa. St. 397. The imposition of absolute liability upon the community when property is destroyed through the violence of a mob is not, therefore, an unusual police regulation. Neither is it arbitrary, as not resting upon reasonable grounds of policy. Such a regulation has a tendency to deter the lawless, since the sufferer must be compensated by a tax burden which will fall upon all property, including that of the evil doers as members of the community. It is likewise calculated to stimulate the exertions of the indifferent and the law-abiding to avoid the falling of a burden which they must share with the lawless. In that it directly operates on and affects public opinion, it tends strongly to the upholding of the empire of the law."

The proposed bills represent a renewed effort to make use of the enabling clause ot the Fourteenth Amendment to prevent lynchings resulting from action or inaction on the part of local authorities. See The Federal Antilynching Bill, Col. L. R. 38: 199, 206.

Before entering the discussion of the possible application of the powers granted in the Fourteenth Amendment it would be well, perhaps, to dispose of possible arguments that the Eleventh Amendment precludes such civil liability on the part of political subdivisions of a State. The Eleventh Amendment specifically provides that the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against *one of the United States* by citizens of another State, or by citizens or subjects of any foreign states. This Amendment was the direct result of the decision of the Supreme Court in *Chisholm* v. *Georgia* (1793) 2 Dall. 419 which held that a State was liable to be sued by a citizen of another State or a foreign state. It is part of our history, that, at the adoption of the Constitution, all States were greatly indebted; and the apprehension that actions on these debts might be prosecuted in the Federal courts formed a very serious objection to ratification of that instrument. Suits were instituted, and the Court maintained its jurisdiction. The alarm was general and to quiet the apprehensions that were so extensively entertained, this

Amendment was proposed and adopted. *Cohens* v. *Virginia* (1821) 6 Wheat. 264, 406.

The very object and purpose of the Eleventh Amendment were to prevent the indignity of subjecting a sovereign State to the coercive process of judicial tribunals at the instance of private parties. *Ex parte Ayers* (1887) 123 U. S. 443, 505. Consequently a suit against a governor in his official capacity to recover moneys in the State treasury or a suit to compel performance of a State contract by mandamus against its officers requiring application of funds in the State treasury and the collection of a specific tax are considered suits against the State. See *Governor of Georgia* v. *Madrazo* (1828) 1 Pet. 110; *Kentucky* v. *Dennison* (1861) 24 How. 66, 98; *Louisiana* v. *Jumel* (1883) 107 U. S. 711. The right, therefore, of an individual to sue a State, in either a Federal or a State court, cannot be derived from the Constitution or the laws of the United States. It can only come from the consent of the State. *Palmer* v. *Ohio* (1918) 248 U. S. 32, 34 citing authorities. However, this Amendment does not necessarily prevent suits by individuals against defendants who claim to act as officers of a State or to recover money or property unlawfully taken from them in behalf of a State. *Re Tyler* (1893) 149 U. S. 164, 190; *Scott* v. *Donald* (1897) 165 U. S. 58, 67; 165 U. S. 107. Nor can the immunity afforded by the Eleventh Amendment be availed of by public agents when sued for their own torts where, under color of their office, they have injured one of the State's citizens. In such instances the wrongdoer may be treated as a principal and therefore found individually liable. See *Hopkins* v. *Clemson Agricultural College* (1911) 221 U. S. 636, 643; *Belknap* v. *Schild* (1896) 161 U. S. 10, 18; *Old Colony Trust Co.* v. *Seattle* (1926) 271 U. S. 426; and *Worcester County Trust Co.* v. *Riley* (1937) 302 U. S. 292. See also *Refoule* v. *Ellis* (1947) 74 F. Supp. 336, 338.

In the public law of the United States, then, a State is sovereign or at least quasi-sovereign. Not so, a local governmental unit, though the State may have invested it with governmental power. Such a governmental unit may be brought into court against its will without violating the Eleventh Amendment. See the dissent of Mr. Justice Cardozo in *Ashton* v. *Cameron County District* (1936) 298 U. S. 513, 543 citing *Lincoln County* v. *Luning* (1890) 133 U. S. 529 and *Hopkins* v. *Clemenson College*, supra. In *Lincoln County* v. *Luning*, Mr. Justice Brewer had stated:

"With regard to the first objection, it may be observed that the records of this court for the last thirty years are full of suits against counties, and it would seem as though by general consent the jurisdiction of the Federal courts in such suits had become established. But irrespective of this general acquiescence, the juisdiction of the Circuit courts is beyond question. The Eleventh Amendment limits the jurisdiction only as to suits against a State. It was said by Chief Justice Marshall, in *Osborn* v. *The Bank of the United States*, 9 Wheat. 738, 857, that 'the Eleventh Amendment, which restrains the jurisdiction granted by the Constitution over suits against States, is of necessity limited to those suits in which the State is a party on the record.'

"While that statement was held by this court in the case of *In re Ayers*, 123 U. S 443, to be too narrow, yet by that decision the jurisdiction was limited only in respect to those cases in which the State is a real, if not a nominal defendant; and while the county is territorially a part of the State, yet politically it is also a corporation created by and with such powers as are given to it by the State. In this respect it is a part of the State only in that remote sense in which any city, town, or other municipal corporation may be said to be a part of the State. *Metropolitan Railroad Co.* v. *District of Columbia*, 132 U. S. 1."

Thus sovereignty of the State is protected. However the separate political communities under a State appear to have no more sovereignty than the District of Columbia. In other words the subordinate legislative or municipal powers lodged in these political subdivisions do not make them sovereign. In the case of the District of Columbia, sovereignty is lodged with the Government of the United States, not in the Corporation of the District of Columbia. See *Metropolitan Railroad Co.* v. *D. C.* (1889) 132 U. S. 1, 9; *Roach* v. *Van Riswich*, 1 MacArth, & M. 171, 178; *Grether* v. *Wright* (1896) 75 F. 742, 756; and *Stoutenburgh* v. *Hennick* (1889) 129 U. S. 141, 147. The protection of the Eleventh Amendment, then, is limited to suits in which the State is a party on the record or at least the real defendant and does not prohibit suits against counties or other political subdivisions of the State. See *Cooper* v. *Westchester County* (1941) 42 F. Supp. 1; *Pettibone* v. *Cook County, Minn.* (1941) 120 F. 2d 850; *Dunnuck* v. *Kansas State Highway Commission* (1938) 21 F. Supp. 882; and *Camden Interstate R. Co.* v. *Catlettsburg* (1904) 129 F. 421.

Willoughby states that the constitutionality of the provision imposing upon a county in which a lynching occurs a penalty recoverable in a suit by the United States against the county is not free from constitutional doubt. The question, he says, is an open one in the sense that there have been no adjudications of it by the Supreme Court, but the suit to recover the penalty or damages would be a suit against the State unless it could be held that the county, as regards the general enforcement of law, is to be viewed as acting on its own local behalf and not as an agency of the State. Willoughby on the Constitution, Vol. 3, Sec. 1272, p. 1937. In view of the foregoing, it appears that general doubt, which he raised, can be resolved in favor of the existence of Federal power to enact legislation providing for such suits, provided, there is also found in the Fourteenth Amendment the power to protect the rights violated by a lynching.

Lynching or lynch law is defined by Anderson's Dictionary of Law, as the action of private individuals, organized bodies of men, or disorderly mobs, who, without legal authority, punish, by hanging or otherwise, real or suspected criminals, without trial according to the forms of law. American lexicographers refer the origin of the term to the practice of a Virginia farmer named Lynch, who during the War of Independence was presiding justice of the county court of Pittsylvania, Virginia. The court in that State for the trial of felonies sat at Williamsburg, 200 miles distant Horse thieves who had established posts from the north, through Virginia, into North Carolina, were frequently arrested and remanded to Williamsburg for trial. Not only was the attendance of witnesses at that distance rendered uncertain, but when they did appear they were sure to be confronted by false witnesss for the outlaws. Moreover, the difficulty of conveying the accused to Williamsburg was increased, and the sitting of the court made uncertain, by the presence of the British under Cornwallis. Accordingly the justices of the county court of Pittsylvania assembled, and Judge Lynch proposed that since, for Pittsylvania, the court at Williamsburg had practically ceased to exist, and, in consequence, heinous crimes went unpunished, the court over which he presided should try all felonies committed in the county; that is to say, the place of trial was to be changed by mere resolution. The plan was adopted, with good results. The thieves were disbanded; many being hanged, which was the lawful penalty. The change of forum was against the words of the law, but justified, Lynch and others held, by the circumstances. See Words and Phrases, permanent edition, citing *State* v. *Aler*, 39 W. Va. 549.

Existing Federal jurisdiction as to lynching and mob violence is based largely on U. S. C. 18: 51 and 52 which are fragments of the Civil Rights Acts of 1866 and 1871 and the Enforcement Act of 1870 (See 14 Stat. 27; 16 Stat. 140, 433; 17 Stat. 13) and were passed primarily to make effective the guarantees of the Thirteenth, Fourteenth, and Fifteenth Amendments. Coleman, Freedom From Fear on the Home Front, Ia. L. Rev. 29: 415, 417. These provisions read:

"SEC. 51. (Criminal Code, section 19.) Conspiracy to injure persons in exercise of civil rights.

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States. (Mar. 4, 1909, ch. 321, sec. 19, 35 Stat. 1092.)"

"SEC. 52. (Criminal Code, section 20.) Depriving citizens of civil rights under color of State laws.

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, sec. 20, 35 Stat. 1092.)"

The broad provisions of the Fourteenth Amendment sought to be invoked reads:

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge

the privileges or immunities of citizens of the United States; or 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."

"SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

There are indications that the authors of this Amendment intended that Congress should have broad powers to provide against the denial of rights of citizens of the United States. See Flack, The Adoption of the Fourteenth Amendment. It will be recalled that the background period of this Amendment was a stormy era of our history; that after the Civil War a bitter controversy arose in which President Johnson sided with the Southern States in the contention that they were entitled, as a matter of constitutional right, to unconditional recognition and readmission to the Union. Encouraged by the President's support, these States were led, in some instances, to assume an attitude of definance and to enact harsh laws directed against the newly freed negroes. The prevailing sentiment in the Northern States, on the other hand, was that all the fruits of the war would be wasted unless guarantees were secured against abitrary and oppressive State action. See Guthrie, Lectures on the Fourteenth Amendment. * * * In the atmosphere of this controversy the proposed Amendment was submitted to the States

Noble language enunciating broad general principles has often been used by the Supreme Court to describe the powers granted but the point actually decided has in many instances been restrictive. An example of this noble language followed by narrow construction is the case of *U. S.* v. *Cruikshank* (1876) 92 U. S. 542, 555 where Mr. Chief Justice Waite speaking for the Court said, "* * * The quality of rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. * * *" After making this assertion he went on to say that the only obligation resting upon the United States was to see that States do not deny the right. See also the speech of Representative Keating, Cong. Rec. (daily) Nov. 20, 1947, p. A4591.

Further illustrations of language are:

"Rights and immunities created by or dependent upon the Constitution of the United States can be protected by Congress. The form and manner of the protection may be such as Congress, in the legitimate exercise of its legislative discretion, shall provide. These may be varied to meet the necessities of the particular right to be protected." *U. S.* v. *Reese* (1876) 92 U. S. 214, 217.

"* * * [the Fourteenth Amendment] does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers, executive or judicial, when these are subversive of the fundamental rights specified in the Amendment." *Civil Rights Cases* (1883) 109 U. S. 8, 11.

"And so * * * until * * * some State action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the Fourteenth Amendment, no legislation of the United States under said amendment, nor any proceeding under such legislation, can be called into activity: for the prohibitions of the amendments are against State laws and acts done under State authority" (p. 13).

"* * * Many wrongs may be obnoxious to the prohibitions of the Fourteenth Amendment. * * * Such, for example, would be * * * allowing persons who have committed certain crimes * * * to be seized and hung by the posse comitatus without regular trial * * *" (p. 23).

"The Fourteenth Amendment * * * undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights * * *." *Barbier* v. *Connolly* (1885) 113 U. S. 27, 31.

The purpose of the Fourteenth Amendment "* * * was to secure equal rights to all persons, and, to insure to all persons the enjoyment of such rights, [and] power was given to Congress to enforce its provisions by appropriate legislation. Such legislation must act upon persons, not upon the abstract thing denominated a State, but upon persons who are agents of the State in the denial of the rights which were intended to be secured. Such is the act of March 1, 1875 (carrying penalties for exclusions from jury service on account of race, color, or previous condition of servitude), and we think it was fully authorized by the Constitution." *Ex parte Virginia* (1879) 100 U. S. 339, 347.

"Whenever by any action of a State, whether through its legislature or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors, in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution * * *" *Carter* v. *Texas* (1900) 177 U. S. 442, 447.

This statement was repeated in the same terms in *Rogers* v. *Alabama* (1904) 192 U. S. 226, 231, and again in *Martin* v. *Texas* (1906) 200 U. S. 316, 319. The principle is equally applicable to a similar exclusion of negroes from service on petit juries. *Strander* v. *West Virginia* (1880) 100 U. S. 303. And although the State statute defining the qualifications of jurors may be fair on its face, the constitutional provision affords protection against action of the State through its administrative officers in effecing the prohibited discrimination. *Neal* v. *Delaware* 103 U. S. 370, 397; *Norris* v. *Alabama* (1935) 294 U. S. 587, 589.

"* * * The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. *Hurtado* v. *California*, 110 U. S. 516, 535. It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for everyone's right of life, liberty, and property, which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which legislatures, executives and courts are expected to make, execute and apply laws * * *" *Truax* v. *Corrigan* (1921) 257 U. S. 312, 332.

The foregoing statements do not, of course, necessarily decide the issue. If Congress has the power to enact legislation predicated on the failure of local officers to act or on acts of omission, then it is apparent that the requisite power must be found largely in the provision of the Fourteenth Amendment which reads, "nor [shall any State] *deny* to any person within its jurisdiction the equal protection of the laws." If the word *deny* can be said to be used in the same sense as "withhold," then inaction could properly be the subject of appropriate legislation. This matter is discussed by Willoughby, The Constitutional Law of the United States, second edition, volume 3, p. 1933–1937 as follows:

"* * * It seems reasonably clear from the decisions discussed in the preceding section that, where the officials of the States have been derelict in the performance of their official duties with regard to the protection of persons against lynching, or, it may be said, against any other form of violence, whether to persons or to their property, or has conspired with others to that end, there is ground for saying that there has been a deprivation of life, liberty or property by the State and therefore, that the prohibition of the Fourteenth Amendment has been violated, and therefore, that an act of Congress directed to the punishment of such dereliction would be constitutional. Equal protection of the laws would also be denied in cases in which it would appear that such derelictions had been motived by animosities against persons because of their race, nationality, or because of their inclusion within a certain social or religious or other class, group, or assocation. It is also probably correct to say that private individuals conspiring with State officials to deny to persons in the custody of State officials due process of law or the equal protection of the laws could be held responsible in the Federal courts, for, in such cases, under the general law of conspiracies according to which all the parties are principals, such private persons would, as to their status, be grouped with the State officials. * * *

"Whether it would be constitutional to provide for the trial in the Federal courts of persons participating in lynching, whom the State authorities refuse or neglect to prosecute to judgment, is highly doubtful. Such refusal or neglect to prosecute on the part of the State officials might be considered to violate the Fourteenth Amendment, and, therefore, be Federally punishable, but it is difficult to see how the fact that they had not been effectively proceeded against by the State authorities would operate to bring private individuals within the Federal jurisdiction which, under the Fourteenth Amendment, exists only with reference to violations by the States of the provisions of that Amendment. [See especially *James* v. *Bowman* (190 U. S. 127).] If such a statutory provision with reference to lynchings were upheld there would seem to be no logical reason why it would not be necessary to uphold statutes with similar provisions which would relate to all cases in which the claim could be substantiated that State officials have been derelict in the performance of their official duties to the detriment of the personal or property rights of private individuals. Authority for the constitutionality of this provision has been sought in the statement of the court in *Virginia* v. *Rives* [100 U. S. 313.] that, in the enforcement of the prohibitions of the Fourteenth Amendment, Congress may use its discretion,—'It may secure the right—that is, enforce its recognition—by removing the case from a State court in which it is denied into a Federal court where it will be acknowledged.' It is clear, however, that this declaration had reference to cases already instituted in State courts and in which the Federal right had been denied, and that it would not cover cases in which there has been no State action and which were proposed to be originally brought in Federal courts. Authority has also been sought for this and other provisions of the proposed act by asserting that there is a 'peace of the United States' which is violated in the premises and hence a Federal jurisdictional right to act. This contention can scarcely be maintained since it is well established that there is no peace of the United States which can be violated except in so far as some specific Federal right, privilege, or immunity is violated; and it is also established that the right to life, liberty and property and to equality of protection of the laws are not, in themselves, affirmatively considered, Federal rights; they are, and remain, rights created or recognized by the laws of the States, though the persons enjoying them are Federally guaranteed against their impairment by the States.

"A strong case upon this point is that of *United States* v. *Wheeler*. [254 U. S. 281.] That case arose out of the forcible deportation by an armed mob of persons from the State of Arizona, and the bringing of indictments against the members of the mob under Section 19 of the Federal Criminal Code which penalizes the conspiring of two or more persons 'to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States.' In the instant case it was claimed that the deported individuals had been denied the right to reside and remain peacefully in the State, and that immunity from the violation of this right was Federally guaranteed to them. The Supreme Court, however, held this contention to be without ground, citing *Paul* v. *Virginia*, [8 Wall. 168.] *Ward* v. *Maryland*, [12 Wall. 418] and the *Slaughter House cases*. [16 Wall. 36.] The court said: 'Undoubtedly the right of citizens of the States to reside peacefully in, and to have free ingress into and egress from, the several States, had, prior to the Confederation, a twofold aspect: (1) as possessed in their own States, and (2) as enjoyed in virtue of the comity of other States. But although the Constitution fused these distinct rights into one by providing that one State should not deny to the citizens of other States rights given to its own citizens, no basis is afforded for contending that a wrongful prevention by an individual of the enjoyment by a citizen of one State in another of rights possessed in that State by its own citizens was a violation of a right afforded by the [Federal] Constitution. This is the necessary result of Article 2, Section 2, which reserves to the several States authority over the subject, limited by the restrictions against State discriminatory action, hence excluding Federal authority except where invoked to enforce the limitation, which is not here the case.' This reasoning and conclusion would seem to be fully applicable to the provisions of the proposed Anti-Lynching Act."

An attempt to enforce the provisions of the equal protection clause in the manner proposed will run into the argument that neither the Fourteenth Amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the peace and good order of the people. *Barbier* v. *Connolly*, supra, p. 31. Furthermore an argument will be raised that even if such regulations by the Federal Government were sustained there could be no assurance that the Federal law would be any more effective than the local law, or that a verdict of a Federal jury would differ from that of a State jury selected from the same people. Stil further it will be argued that the proposal is definitely antagonistic to the philosophy of our system of government and would tend to destroy local responsibility if local subdivisions were forced to exercise delegated sovereign powers of the State under a threat of punishment by the Federal Government exercising a superimposed police power. Some of the practical aspects of these arguments are illustrated in the instances related by Coleman, Freedom From Fear on the Home Front, Iowa L. R 29: 415. Speaking of the application of U. S. C. 18: 51 and 52 he states that ultimately government can do little without the support of community public opinion. In some areas, the issue

of state's rights has a tendency to break the ranks of legal procedure and overflow into every stage of the trial, including the deliberations of the jury. Accordingly, acquittals in addition to those resulting from failure of proof, can be expected where the Federal Government seeks to prosecute for crimes traditionally deemed the sole concern of the State or local community (p. 423).

As a partial answer to these points it should be noted that these guaranties of protection already have been held to extent to all persons within the territorial jurisdiction of the United States without regard to differences of race, of color, or of nationality. See *Yick Wo* v. *Hopkins* (1886) 118 U. S. 356. They cover the action of the curators of a State university who represent the State in carrying out its educational policy of separating the races in its educational institutions by refusing to admit a negro as a student in the university law school because of his race. See *Missouri ex rel. Gaines* v. *Canada* (1938) 305 U. S. 337; and *Sipuel* v. *Bd. of Regents* (1948) 16 L. W. 4090.

Where the proceedings in a State court, although a trial in form by reason of the use of United States troops, were only in form and the appellants were hurried to conviction under the pressure of a mob without regard for their rights, the trial is without due process of law and absolutely void. See *Moore* v. *Dempsey* (1923) 261 U. S. 86. In this regard attention is invited to the drastic provisions of the Act of April 20, 1871 (R. S. 5299; U. S. C. 50:203) which reads:

"Whenever insurrection, domestic violence, unlawful combinations, or conspiracies in any State so obstructs or hinders the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, named in the Constitution and secured by the laws for the protection of such rights, privileges, or immunities, and the constituted authorities of such State are unable to protect, or, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy, opposes or obstructs the laws of the United States, or the due execution thereof, or impedes or obstructs the due course of justice under the same, it shall be lawful for the President, and it shall be his duty, to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of such insurrection, domestic violence, or combinations."

Certainly it can be argued that if sufficient power is vested in the Federal Government to sustain the above enactment then the same power will sustain an exertion of a degree somewhat less than calling out the armed forces.

Mr. Justice Story early pointed out that the Constitution "unavoidably deals in general language. It did not suit the purposes of the pepole, in framing this great charter of our liberties, to provide for minute specifications of its powers or to declare the means by which those powers should be carried into execution. It was foreseen that this would be perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence." *Martin* v. *Hunter* (1816) 1 Wheat. 304, 326. Much of what Mr. Justice Story said applies to the language of the amendments which were later added.

Congress has a large discretion as to the means to be employed in the exercise of any power granted it. Every right created by, arising under, or dependent upon the Constitution may be protected or enforced by such means as Congress may deem best; if the Constitution guarantees a right, the National Government is clothed with authority to enforce it—the powers given to the National Government are not ineffective because the means of enforcing them are not expressly given. Congress has a large discretion as to the means to be employed, and may employ those means which, in its judgment, are most advantageous, taking care only that they are not inconsistent with the limitations placed upon the general power by the Constitution. The Constitution does not profess to enumerate the means by which he powers it confers shall be executed, and where an end is required and a duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted. See The Constitution of the United States of America (Annotated) S. Doc. No. 232—74th Cong. pp. 265–6 citing authorities.

The courts will determine whether the means employed by Congress to accomplish the ends sought have any relation to the powers granted by the Constitution, and if the measures adopted as most eligible and appropriate are adapted to the

end to be accomplished, and are not inconsistent in letter or spirit with the limitations of the Constitution, the courts cannot declare them inexpedient or unwise. Every act of Congress, to be valid, must find in the Constitution some warrant for its passage; but while construction, for the purpose of conferring a power should be resorted to with great caution, yet resort must be had to every reasonable construction to save a statute from unconstitutionality, and a choice of means by Congress is not to be adjudged invalid unless the conflict between the Constitution and the statute is clear and strong. *Ibid.* citing *Wilkes* v. *Dinsman* (1849) 7 How. 89, 127; *U. S.* v. *Harris* (1883) 106 U. S. 629, 635 and other cases.

Among the powers expressly conferred upon Congress by the Constitution is the power to make all laws necessary and proper for carrying into execution the powers specifically granted to it, and all other powers vested by the Constitution in the Government of the United States, or any department or officer thereof. As stated earlier, Congress may use any means, in the exercise of this general power of legislation, deemed by it most eligible and appropriate, which are adapted to the end to be accomplished, and are consistent with the letter and the spirit of the Constitution. *Logan* v. *U. S* (1892) 144 U. S. 263, 283 citing *McCulloch* v. *Maryland* 4 Wheat. 316, 421; and *Julliard* v. *Greenman* 110 U. S. 421, 440 and 441.

If the decisions in *U. S.* v. *Classic* (1941) 313 U. S. 299; *Smith* v. *Allwright* (1944) 321 U. S 649; and *U. S.* v. *Screws* (1945) 325 U. S. 91 are indicative of the present trend to afford protection for civil and political rights, then perhaps some of the restrictions afforded by earlier decisions on the Fourteenth Amendment will be found not to preclude the enforcement of the proposed liability against individuals and political subdivisions. This would, as indicated earlier, require a construction of the equal protection clause to comprehend cases where such protection is withheld by reason of inaction on the part of local authorities, but such a construction, as Willoughby pointed out, could possibly also comprehend local political assassinations, gang warfare, or any other type of case where a claim could be substantiated that local officers were derelict in their duties to the detriment of individual rights.

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9. United States Congress—Report of Senate Committee on Judiciary to accompany H R. 1507, 75th Cong., 1st sess., S. Rept. 793.
10. United States Congress—Report of House Committee on Judiciary to accompany H. R. 2251, 75th Cong., 1st sess., H. Rept. 563.
11. (a) United States Congress—Hearings before a subcommittee of the Senate Committee on Judiciary on H. R. 801, 76th Cong., 3d sess., February 6, 7, March 5, 12, and 13, 1940.
    (b) Report of Senate Committee on Judiciary on same bill, S. Rept. 1380.

12. List of antilynching bills introduced in Congress from January 20, 1900, through May 26, 1947, with notation of action taken (mimeographed list enclosed).
13. Antilynching bills introduced in Congress subsequent to May 26, 1947, 80th Cong., 1st sess.—H. R. 3850, 4155. Both these bills were referred to the Committee on the Judiciary, but no further action was taken.
14. Extension of remarks of Hon. Kenneth B. Keating, Congressional Record, vol. 93, p. 4591, November 20, 1947.
15. To Secure These Rights—The report of the President's Committee on Civil Rights, established by Executive Order 9808, December 5, 1946 (Federal Register, vol. 11, p. 14153), to make recommendations "with respect to the adoption or establishment, by legislation or otherwise, of more adequate and effective means and procedures for the protection of the civil rights of the people of the United States."—Discussion and recommendations with respect to antilynching legislation, pp. 20–25 and 157–158.

CONSTITUTIONAL MEMORANDUM OF AMERICAN JEWISH CONGRESS

This memorandum on constitutionality of Federal antilynching bills is submitted at the suggestion of Senator Ferguson. It is designed to supplement the statement submitted to the committee on behalf of the American Jewish Congress by Albert E. Arent on January 21, 1948.

No attempt will be made here to cover all aspects of the bases of Congressional power to legislate with respect to lynching. Only two points will be dealt with: (1) The power of the United States Government to implement the provisions of section 1 of the fourteenth amendment and (2) the duty of the Federal Government to guarantee to each State a republican form of government under article IV, section 4 of the Constitution.

On the first of these points, we shall assume the validity of the doctrine of the *Civil Rights Cases* (109 U. S. 3) that the prohibitions of the fourteenth amendment apply only to acts by States and State officials. We do not believe that that doctrine is correct. The legislative history of the fourteenth amendment indicates strongly that the intent of its sponsors was much broader than the construction ultimately given the amendment by the Supreme Court. This point, however, has already been presented to this committee in some detail, and we shall not attempt to cover that ground again. Similarly, we shall not set forth here our reasons for believing that antilynching legislation is a proper exercise by Congress of its duty to implement the obligations of the United States under the United Nations Charter.

POINT I. EFFECTUATION OF THE REQUIREMENTS IMPOSED UPON THE STATES BY THE FOURTEENTH AMENDMENT DEMANDS ACTION BY THE FEDERAL GOVERNMENT TO CURB AND PUNISH LYNCHING

The fourteenth amendment to the United States Constitution provides in part as follows:

"SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

* * * * * * *

"SEC. 5. The Congress shall have the power to enforce by appropriate legislation the provisions of this article."

For the purposes of this memorandum we assume that the requirements of due process and equal protection of the laws impose duties on States and State officials alone. It is well settled that the Federal Government may enforce those duties by appropriate legislation directed against violations of the duties by State officials (18 U. S. C., sec. 52; *Ex parte Virginia*, 100 U. S. 339 (1880); *Strauder* v. *West Virginia*, 100 U. S. 303 (1880); *Virginia* v. *Rives*, 100 U. S. 313 (1888)).

The duty thus imposed is not satisfied when a State does no more than lay down rules requiring its officials to comply with the Constitution. The State must, in addition, see to it that there is compliance in fact. When it fails to do so—when persons whom it has given official duties and powers interfere with due process or equal protection of the laws—the constitutional requirements are violated (*Ex parte Virginia*, 100 U. S. 339 (1880); *U. S.* v. *Classic*, 313 U. S. 299, 326 (1941);

Screws v. *U. S.*, 325 U. S. 91, 107–113 (1945)). As the Court said in *Ex parte Virginia* (100 U. S. at page 345):

"Whosoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it."

It is generally considered that the early decisions of the Supreme Court construing the fourteenth amendment held unconstitutional all Federal statutes directed at conduct by private parties which resulted in deprivation of rights under that amendment. That is not true. All that was held was that, in the absence of a showing that the State had failed to curb the activities of private individuals, those activities could not be reached. Thus, in *U. S.* v. *Harris* (106 U. S. 629 (1883)), the Court invalidated a statute providing punishment for private persons who deprived any person of the equal protection of the laws. Basic to the decision in that case, however, was the assumption that the States could and would protect their inhabitants against wrongs committed by individuals. Thus it quoted from its earlier decision in *U. S.* v. *Cruikshank* (92 U. S. 542 (1876); 106 U. S. at 639)):

"The duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the States, and it remains there. The only obligation resting upon the United States is to see that the States do not deny the right."

The vice in the statute found to be unconstitutional was that it depended in no way on failure of the States to perform their function. The Court said (*ibid.*):

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

Similarly, in the *Civil Rights cases* (109 U. S. 3), where the courts held invalid a Federal statute requiring equal treatment in places of public accommodation, the Court said (109 U. S. at p. 25):

"Innkeepers and public carriers, by the laws of all the States, so far as we are aware, are bound, to the extent of their facilities, to furnish proper accommodation to all unobjectionable persons who in good faith apply to them."

It assumed further that the ordinary individual right, when invaded in a manner "not sanctioned in some way by the State, * * * may presumably be vindicated by resort to the laws of the State for redress" (109 U. S. at p. 17). It held the statute under consideration invalid because (109 U. S. at p. 14):

"An inspection of the laws shows that *it makes no reference whatever* to any supposed *or apprehended* violation of the fourteenth amendment on the part of the States. It is not predicated on any such view. It proceeds *ex directo* to declare that certain acts committed by individuals shall be deemed offenses, and shall be prosecuted and punished by proceedings in the courts of the United States. It does not profess to be corrective of any constitutional wrong committed by the States; it does not make its operation to depend upon any such wrong committed. It applies equally to cases arising in States which have the justest laws respecting the personal rights of citizens, and whose authorities are ever ready to enforce such laws, as to those which arise in States that may have violated the prohibition of the amendment. In other words, it 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.*"

The Supreme Court expressly recognized that a State may violate the prohibitions of the fourteenth amendment by inaction as well as by action in *Truax* v. *Corrigan* (257 U. S. 312 (1921)). The State courts in that case had refused to issue an injunction to restrain picketing which had caused a serious loss of business to the plaintiff. Their refusal to act was based on a State statute amending previous law which had permitted injunctions in such situations. The

Supreme Court held that the inaction of the State was unconstitutional. It found that the refusal to issue an injunction deprived the plaintiff of property rights protected against invasion by the States under the fourteenth amendment. The invasion was accomplished solely by inaction.

When State officials fail or refuse to give protection to life itself they violate constitutional rights just as clearly. The Federal Government can and must prevent such violations. The thirteenth and fourteenth amendments to the Constitution are "enlargemens of the power of Congress. They are to some extent declaratory of rights, and though in form prohibitions, they imply immunities, such as may be protected by congressional legislation." *Ex parte Virginia* (100 U. S. at p. 345). The fourteenth amendment "was designed to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and *to give that race the protection of the general government, in that enjoyment, whenever it should be denied by the States.*" *Strauder* v. *West Virginia* (100 U. S. at p. 306). [Emphasis supplied.]

It is not necessary that the Government wait until a specific denial has taken place. In the exercise of any of its constitutional powers, the Government may either act to correct evils after the event or take preventive action to restrain the evils. Thus, in the exercise of the power of Congress over interstate commerce, it has been held that "if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain, or burden it, it has the power to subject them to national supervision and resraint." *United Mine Workers* v. *Coronado Co.* (259 U. S. 344, 408 (1922)).

Supreme Court decisions under the commerce clause provide a direct analogy to the question before the committee. They establish that where Congress finds that a specified practice, not otherwise within its jurisdiction, "may and from time to time does," jeopardize an interest which Congress is bound to protect, it may regulate the practice generally. In *Stafford* v. *Wallace* (258 U. S. 495 (1922)), the Supreme Court passed on the validity of the Packers and Stockyard Act of 1921 (42 Stat. 159). That statute adopted comprehensive regulations of the activities of commission men and dealers in the stockyards of the country. Passage of the act was prompted by certain abuses which Congress found to have existed in the stockyards. The Court held that despite the essentially intrastate nature of the stockyard operations, the fact that they had frequently impaired the flow of interstate commerce justified general regulation by the Federal Government. It held that since Congress could punish restraints on interstate commerce after they occurred, it could also "provide regulation to prevent their formation" (258 U. S. at 250). Continuing, the Court said (*id.*, at pp. 520–521):

"The reasonable fear by Congress that such acts, usually lawful and affecting only intrastate commerce when considered alone, will *probably and more or less constantly* be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, *expressed in this remedial legislation*, serves the same purpose as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for Federal restraint. *Whatever amounts to more or less constant practice*, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and *it is primarily for Congress to consider and decide the fact of the danger and meet it.*" [Emphasis supplied.]

Accordingly, it was held that the statute was "carefully drawn to apply only to those practices and obstructions which in the judgment of Congress are likely to affect interstate commerce prejudicially" (*id.*, at p. 528).

A few months later, the Court, in *Hill* v. *Wallace* (259 U S. 44 (1922)) struck down the Futures Trading Act of 1921 (42 Stat. 187). That act imposed a confiscatory tax on all trading in grain for future delivery, excluding, however, trading which complied with certain comprehensive regulations laid down in the act. After holding that the act was not a justifiable exercise of the taxing power, the Court held that it could not be sustained under the commerce clause. Since the act was "without any limitation of the application of the tax to interstate commerce, or *to that which the Congress may deem from evidence before it to be an obstruction to interstate commerce*, we do not find it possible to sustain the validity of the regulations as they are set forth in this act" (259 U. S. at p. 68). [Emphasis supplied.] The Court found (*id.*, at p. 69) that "sales for future delivery on the board of trade are not in and of themselves interstate commerce. They cannot come within the regulatory power of Congress, as such, unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate commerce so as to be an obstruction or a burden thereon." The Court distinguished the *Stafford* case on the ground that, in passing the statute there reviewed, Congress had found the practices regulated "likely, unless regulated, to impose a direct burden on the interstate commerce passing through" (*ibid.*).

Thereupon Congress passed the Grain Futures Act of 1922 (42 Stat. 998). The act was expressly stated to be designed to protect interstate commerce. It contained findings that as a result of manipulations of grain transactions "sudden and unreasonable fluctuations in the prices thereof frequently occur * * * which are * * * an obstruction to and a burden upon interstate commerce * * and render regulation imperative for the protection of such commerce and the national public interest therein" (Grain Futures Act, sec. 3). The comprehensive regulations of the statute were based on those findings.

In *Chicago Board of Trade* v. *Olsen* (262 U. S. 1 (1923)), the Supreme Court held that the new statute corrected the defects of the old. It said (262 U. S. at pp. 37, 40):

"In the act we are considering, Congress has expressly declared that transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation, and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce and render regulation imperative for the protection of such commerce and the national public interest therein."

"By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress that manipulation of the market for futures on the Chicago Board of Trade *may, and from time to time does*, directly burden and obstruct commerce between the States in grain, and that it recurs and is a constantly possible danger. For this reason, *Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided.*" [Emphasis supplied.]

In sum, the Supreme Court has held that where certain practices frequently affect interstate commerce, it may regulate those practices generally, without showing in each case that they affect that commerce. So here, Congress, having found that lynchings frequently and indeed regularly are a manifestation of unconstitutional action or inaction by the States, can meet the problem by legislating against lynching generally.

We submit that Congress may and should find that lynchings regularly result from encouragement or at least condonation on the part of State officials. As we said in the statement submitted to this committee on January 21, "the machinery of the State, or part of it, creates the conditions which permit the functioning of these private governments. It does so by inaction and acquiescence even where it does not do so by direct participation. It thereby becomes, at the least, a silent partner to the lynching and gives the reality of State authority to the direct participants." Enactment of the Wagner-Morse bill would be no more than a determination by Congress that a situation of national concern has arisen which requires comprehensive Federal preventive action.

POINT II. EFFECTUATION OF THE DUTY OF THE FEDERAL GOVERNMENT, UNDER ARTICLE IV, SECTION 4, OF THE CONSTITUTION, TO GUARANTEE TO ALL STATES A REPUBLICAN FORM OF GOVERNMENT REQUIRES ACTION BY THE FEDERAL GOVERNMENT TO CURB AND PUNISH LYNCHING

In our statement of January 21, we suggested that the committee add to the Wagner-Morse bill a statement that its terms are designed to guarantee to every State in the Union a republican form of government. Even if a bill were ultimately passed without such a provision, we believe it could be held valid under the guarantee provision of article IV, section 4, on the ground that it did in fact have the effect of implementing that clause.

The Wagner-Morse bill would punish private persons who exercise the "power of correction or punishment * * * with the purpose or consequence of preventing the apprehension of trial or punishment by law" of persons suspected of crimes. When the power of corerction or punishment is so exercised, the republican form of government ceases to exist in anything more than name.

Article IV, section 4, of the Constitution lays an affirmative duty on the Federal Government to prevent this evil. It reads: "the United States *shall* guarantee

to every State in this Union a republican form of government." [Emphasis supplied.] There can be no doubt that these words require the Federal Government to grant the reality of republican government as well as the form.

In a long line of decisions, beginning just short of 100 years ago, the Supreme Court has held that "the enforcement of that guarantee, according to the settled doctrine, is for Congress, not the courts." *Highland Farms Dairy* v. *Agnew* (300 U. S. 608, 612 (1937). Accord: *Luther* v. *Borden* (48 U. S. (7 How.) 1 (1849)); *Texas* v. *White* (74 U. S. (7 Wall.) 700 (1879)); *Taylor & Marshall* v. *Beckham* (178 U. S. 548 (1900)); *Pacific Telephone Co.* v. *Oregon* (223 U. S 118 (1912)); *Ohio* v. *Akron Park District* (281 U. S. 74 (1930)).

In the leading case *Luther* v. *Borden* (48 U. S. (7 How.) at p. 45), the Supreme Court recognized the affirmative obligation of the legislative branch to act under this clause, saying, "Unquestionably a military government, established as the permanent government of the State, would not be a republican government, and *it would be the duty of Congress to overthrow it.*" [Emphasis supplied.] Moreover, it has been held that the authority of the Federal Government to adopt laws punishing sedition and advocacy of insubordination in the armed forces derives, in part at least, from such "specific constitutional grants of power" as article IV, section 4. (*Dunne* v. *U. S.*, 138 F. 2d, 137, 140 (C. C. A. 8, 1943).)

The powers of Congress under this clause are as broad as may be needed to effectuate its purpose. "In the exercise of the power conferred by the guarantee clause, as in the exercise of every other constitutional power, a discretion in the choice of means is necessarily allowed." (*Texas* v. *White*, 74 U. S. (7 Wall.) at p. 729.)

Even the less positive command of article IV, section 2 (3) of the Constitution that "No person held to service or labor in one State * * * shall * * * be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due," has been held to form a proper basis for affirmative action by Congress, passage of the Fugitive Slave Acts. (*Prigg* v. *Pennsylvania*, 41 U. S. (16 Pet.) 539, 618–619 (1842).)

The duty of protection which Congress owes runs not to the existing government but to the people of the State. As used in article IV, section 4, "the principal sense of the word [State] seems to be that primary one to which we have adverted, of a people or political community, as distinguished from a government * * *. In this clause a plain distinction is made between a State and the government of a State." (*Texas* v. *White*, 74 U. S. (7 Wall.) at p 721.) Thus, it is the people which must be protected against suspension of orderly government, a protection which is clearly needed where lynch law holds sway. The duty to act is clear when constitutional government is "in imminent danger of being overthrown by an opposing government, set up by force within the State." (*Texas* v. *White*, 74 U. S. (7 Wall.) at p. 730.)

As we have shown, a lynching does just that. It replaces the elected government with government by a mob. It replaces courts established by the elected government with kangeroo courts. It replaces punishment according to law with punishment according to the whims of self-appointed executors. This is an evil which Congress is required to prevent. Article IV, section 4, of the Constitution provides ample authority for legislation to achieve that end.

CONCLUSION

We submit that Congress has full power under the Constitution to enact a statute broad enough to deal effectively with the problem of lynching, a statute which provides Federal penalties for private persons as well as public officials who participate in mob violence. Ample support for such a statute appears in the republican guarantee clause of article IV, section 4, in the fourteenth amendment, and in the treaty-making power. In view of the fact that lynching is an evil which is an appropriate subject for action by any government and the fact that experience shows the need for Federal action, Congress should use its constitutional powers to end lynching now.

Respectfully submitted.

AMERICAN JEWISH CONGRESS,
WILL MASLOW,
JOSEPH B. ROBISON,
Attorneys.

FEBRUARY 2, 1948.

STATEMENT OF GEORGE MARSHALL, CHAIRMAN OF THE BOARD OF THE CIVIL RIGHTS CONGRESS IN SUPPORT OF THE WAGNER-CASE FEDERAL ANTILYNCHING BILL BEFORE THE SUBCOMMITTEE HEARING OF THE SENATE JUDICIARY COMMITTEE

In behalf of the Civil Rights Congress, a Nation-wide organization dedicated to the protection and extension of the civil rights of the American people, I wish to urge passage in this session of the Wagner (S. 1352)-Case (H. R. 3488) antilynch bill.

This bill is one of the most important measures to come before Congress since the adoption of the fourteenth amendment. The Negro people have waited more than 80 years for the passage of this bill together with other related measures which are required to give them the full equality to which they are entitled. The great majority of the American people are increasingly incensed at the failure to pass this legislation in the face of the 4,719 lynchings since 1882 and in the face of the continued practice of this most horrible of crimes.

Legislation of this general type has been passed by the House four times since 1908. Presidential candidates and the major political parties have made repeated campaign statements in support of such legislation and continue to do so today. The American people have become impatient and insistent that strong antilynch legislation as embodied in the Wagner-Case bill be passed overwhelmingly and without further delay in the Senate.

The crime of lynching can no longer be tolerated in America. No year has been free from lynchings. The actual number of lynchings per year have been far greater than the official figures indicate. Thus in 1946 the official total of 6 lynchings fails to include 13 other recorded murders of Negroes which are lynchings under any reasonable interpretations of the term.

The question of the exact number of people lynched, however, is not the whole issue. Civil rights are indivisible. So long as a single lynching occurs, the most sacred of all civil rights, the right to life and liberty, is endangered for all Americans.

Lynching, furthermore, is the kingpin of the entire Fascist system of white supremacy, particularly as it is practiced in the South. So long as lynchers continue to go unpunished—and they do—this most horrible of crimes will remain the ultimate threat used by the white-supremacists to continue their reign of terror over the Negro people, to divide the Negro and white people, and to divert attention whenever their personal and political desires are seriously threatened.

Lynching itself is the epitome of the practice existing in all southern States, and in many northern States, whereby Negroes are condemned to live as second-class citizens and, in many instances, placed outside the protection of the law. Stemming from lynching, there are such other acts of violence against the Negro people as the gouging out of the eyes of Isaac Woodward and the countless other acts of police brutality committed and threatened daily. Likewise based on lynchings are the organization of mob attacks against Negro communities, incorrectly called race riots, and the countless day-by-day abuses and threats by white people in power under the slogan of "keeping Negroes in their place." So long as groups of white people take the law into their own hands and lynchers can proceed without fear of being brought to justice, the pattern of violence and repression against the Negro people and other minorities will also continue.

The wide implications of the ultimate threat of lynching were brought out clearly in evidence which the Civil Rights Congress helped to gather in connection with the proceedings which resulted in the ousting of Senator Bilbo because of his conduct in the July 1946, Mississippi primary campaign. It was brought out that many acts of violence were committed against Negroes who tried to vote and that in a number of instances whole Negro communities were told to stay away from the polls—or else. Between the inflammatory statements of Bilbo, the acts of violence, the open threats of more violence, the overwhelming majority of qualified Negro voters were kept from the polls. This resulted in Bilbo's winning the primary. These outrages, committed clearly for political purposes, were made possible by the ultimate threat of the unpunished lynching and the attitude of mind and action of the white supremacists which follow from this; namely, that they can do no wrong and are free from prosecution where Negroes are concerned.

If lynchers are vigorously prosecuted and brought to justice the whole structure of white supremacy and systematic terrorization and segregation of the Negro people will be vitally weakened.

The history of the past half century has amply proved that the Southern States under poll-tax leadership are incapable or unwilling to bring lynchers to justice. This was demonstrated forcefully last year when the 31 men who were generally known to have participated in the lynching of Willie Earle in Greenville, S. C., were acquitted by the local jury amidst great celebration.

It is clear that Federal antilynch legislation is needed. It must be strong and effective as provided in the Wagner-Case bill. Not only must persons participating in lynch mobs and assisting in lynchings be prosecuted and given heavy punishments, but in addition State officers failing to protect a person against the hazard of lynching must be subject to punishment; the community in which a lynching occurs must be made liable to the person injured or to the next of kin in the event of death.

There can be no question as to the constitutionality of the Wagner-Case bill as has been shown by able lawyers at these hearings and at many legislative hearing in previous years. It is authorized under the fourteenth amendment, the commercial clause, the guaranty of a republican form of government and the treaty-making power. The fourteenth amendment has long demanded this legislation for its full implementation Our recent obligations under the Charter of the United Nations "to promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, or religion," further emphasizes the urgency of this measure

A strong and effective antilynch law has long been demanded as a matter of justice and human rights for the Negro people. It is also a prerequisite to the full protection of the civil and democratic rights of all Americans. In a contracting world of many races and nationalities, the passage of this legislation and companion measures is essential before our country can hope to have the respect and confidence of other nations as a spokesman for democracy.

I therefore urge that your subcommittee and the full Judiciary Committee report the Wagner-Case bill out favorably and bring it to the floor of the Senate for passage at the earliest possible moment. May I urge you further to remind the Republican and Democratic Party leaders that the American people are becoming impatient.

There has been no lack of statements, messages and platform promises deploring the absence of equal protection under the law for the Negro people. The current statements of the leadership of the Republican Party, the report of the President's Committee on Civil Rights, and the President's recent message urging enactment of a series of measures including a Federal antilynching bill come in an election year.

But these expressions can become a substitute for action. And it is action that is needed now to make lynching a Federal crime. Every decent American will have reason to be incensed if this legislation is merely passed by the House as a noble election gesture and for a fifth time allowed to die there. There is every warrant for the demand that the Federal antilynching bill be passed in this session by both Houses of Congress.

STATEMENT OF MARTIN POPPER, VICE PRESIDENT OF THE NATIONAL LAWYERS GUILD, IN SUPPORT OF S. 1352

The National Lawyers Guild supports wholeheartedly the provisions of S. 1352. This support is embodied in a resolution unanimously adopted by the national executive board on December 28, which reads as follows:

"During the past 50 years more than 5,000 persons have met death in the United States by lynching. In recent years all of the lynch victims have been Negroes. Although every State has laws punishing such conduct as murder, rarely have lynchers even been prosecuted. The few prosecutions have usually resulted in acquittals. So far as we have been able to discover, no lyncher of a Negro has ever been given a sentence commensurate with his offense.

"The National Lawyers Guild deems it imperative that the Federal Government immediately enact effective legislation making lynching a Federal crime. We, therefore, endorse the Wagner-Morse-Case antilynching bill (S. 1352 and H. R. 3488) and urge its speedy enactment by the Eightieth Congress"

Our policy of support for this bill rests upon the high concern of the fourteenth amendment with the elementary rights of individual victims and the necessity of fostering world peace by honoring treaties making racial discrimination an international offense.

The fourteenth amendment was adopted because of the doubt that Congress had power to protect recently freed Negroes from violence and discrimination. However, even without it Congress had adopted the Civil Rights Act of 1866, which protected persons against deprivation because of race, color, or previous condition of servitude of any rights enjoyed by white persons.

The sponsors of this act believed that section 1 of the thirteenth amendment, providing that "Neither slavery nor involuntary servitude * * * shall exist within the United States" and section 2 providing that "Congress shall have power to enforce this article by appropriate legislation," fully authorized legislation punishing any discrimination, whether under guise of law, custom, or prejudice against a person because of race, color, or previous condition of servitude. The congressional proponents of the Civil Rights Act of 1866 reasoned that slavery and involuntary servitude would not in fact be abolished so long as such "badges of slavery" survived.[1] They were used to having the Supreme Court find implied in the Constitution a grant to Congress of whatever power was deemed necessary to protect the property of the owner of a slave irrespective of any reserved power in the States, including even the power to impose on every citizen the duty to render affirmative assistance to aid in recovering of runaway slaves when requested.[2]

Some of the proceedings under the Civil Rights Act of 1866 indicate how far it was believed to go. The president of a railway company in Mobile, Ala., which refused to carry Negroes in the same car with white persons, was bound over to the Federal court for violation of the act.[3] Magistrates who refused to allow Negroes to testify were arrested.[4] The mayor of Mobile, Ala., was convicted for banishing a Negro boy from the city.[5]

The draftsmen and sponsors of the fourteenth amendment repeatedly asserted on the floor of Congress in the debates preceding adoption of the amendment, that they wanted to write the Civil Rights Act of 1866 into the Constitution.[6] Opponents of the amendment during the debates likewise recognized this as the objective of its sponsors.[7]

In addition, during committee hearings and debates, John A. Bingham, the draftsman of section 1 of the amendment and in charge of its course through the House [8] and Senator Howard, in charge of the bill in the Senate,[9] each made it clear that the "enjoyment of life" was one of the rights to be protected by the fourteenth amendment.

Furthermore, in debates on legislation to enforce the fourteenth amendment, both Bingham and Howard, as well as many other Congressmen, repeatedly declared that under the fourteenth amendment Congress was empowered to punish not only State officers but all individuals who violated the protected rights.[10]

They explained that a State was to be deemed to have denied the equal protection of its laws when the inequality resulted from omission as well as when it arose through commission. If a State did not enact laws to punish those who committed acts of discrimination or violence on account of race or color or did not enforce such laws, then Congress had the power and the duty to act and the Federal courts to punish offenders. Thus, not all murder or robbery was to be made a Federal offense, but only those offenses which the State failed to

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[1] Congressional Globe, 39th Cong., 1st sess., pp. 321–323, 340.
[2] For a description of the textent to which Congress had exercised this power and courts had sustained it, see dissenting opinion of Mr. Justice Harlan in the *Civil Rights cases*, 109 U. S. 3, 28–31.
[3] McPherson's Scrapbook, The Civil Rights Bill, p. 136.
[4] Ibid., p. 134.
[5] Ibid., p. 115.
[6] Congressional Globe, 39th Cong., 1st sess., pp. 1151–1153 (Thayer), 1291–1292 (Bingham), 2459 (Stevens), 2461 (Garfield), 2465 (Thayer), 2498 (Broomall), 2502 (Raymond), 2511 (Eliot), 2896 (Howard).
[7] Ibid , p. 2467 (Bayer), 2506 (Eldridge).
[8] Congressional Globe, 39th Cong., 1st sess., appendix, p. 429; cf. Congressional Globe, 39th Cong., 1st sess., pp. 14, 813, 1034, 2542–2543; Journal of Reconstruction Committee, pp. 7, 9, 12, 14; Horace E. Flack, the Adoption of the Fourteenth Amendment (1908), pp. 80–81.
[9] Congressional Globe, 39th Cong., 1st sess., p. 2765, quoting from *Corfield* v. *Coryell*, Fed. Cas. No. 3230, 4 Wash. Cir. Ct. 380.
[10] Congressional Record, 42d Cong., 1st sess., pp. 83–85, 150–154, 251, 375, 475–477, 504–506.

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punish; and even then only where the failure to punish constituted an unequal treatment based on race, color, or previous condition of servitude.[11]

Legislation enacted by Congress during the decade following the adoption of the fourteenth amendment took the forms the sponsors of the amendment had explained would be authorized by it. One of the enforcement acts, popularly known as the Ku Klux Act,[12] consisted of five sections, the first of which made any person, who, under color of any law, statute, custom, or regulation of any State, should deprive anyone of any rights, privileges, or immunities secured by the Constitution of the United States, liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress, such proceeding to be prosecuted in the Federal courts. The second section provided that if two or more persons conspire or combine together to do any act in violation of the above-mentioned rights or privileges, which act, if committed within a place under the sole and exclusive jurisdiction of the United States would, under the laws of the United States, constitute the crime of either murder, manslaughter, mayhem, robbery, assault and battery, perjury, subornation of perjury, criminal obstruction of legal process, or resistance of officers in discharge of official duty, arson, or larceny, and if one or more of the parties to the conspiracy or combination do any act to effect the object thereof, all the parties to the conspiracy or combination shall be deemed guilty of a felony, and on conviction, be liable to a penalty of not more than $10,000, or to imprisonment for not more than 10 years, or both, at the discretion of the court; but in case of murder, the penalty to be death. The third section provided that where any portion of people were deprived, by insurrection, domestic violence, or combination, of any of the rights or privileges secured by the bill, and constituted authorities of the State should fail to protect them in these rights, either by inability, neglect, or refusal, and should fail or neglect to apply to the President for aid, such facts were to be deemed a denial by the State of the equal protection of the laws, to which they were entitled under the fourteenth amendment. It was declared to be the duty of the President in such cases to employ the militia or land and naval forces of the United States as he might deem necessary.

During the debates which preceded passage of this act Mr. Bingham made a speech in which he explained his intent in drafting section 1 of the fourteenth amendment. He stated his belief that the language used not only was intended to but did in fact confer upon Congress powers which it never before had and that under them Congress could enact laws for the protection of citizens both as against the States and individuals in the States. Under the amended Constitution Congress had the power, he asserted, to provide against the denial of rights by the States, whether the denial was in the form of acts of commission or omission.[13] Other Members of Congress made similar statements.[14]

The Federal Department of Justice had been in existence less than a year when the Ku Klux Klan Act was enacted.[15] It set out to vigorously enforce this law. Hundreds of persons were indicted and convicted. In June 1871, District Attorney Starbuck reported from North Carolina that the Federal grand jury had returned indictments against 21 different bands of men "going in diguise at night, whipping, shooting, and wounding unprotected citizens." In most of the cases, said he, "the proof shows that these outrages were committed to intimidate the victims to abandonment of their Republican and Union principles." [16]

At the November 1871 term of the Federal circuit court at Columbia, S. C., 420 indictments were found for violation of the enforcement acts. Fixe persons were tried and found guilty, and 25 pleaded guilty. "In every case submitted to a jury," reported the Attorney General proudly, "the verdict was against the prisoner notwithstanding the best defense which skilled counsel, with effective external aid, could make."[17]

Former Attorney General Homer Cummings tells us that "the Klan was disorganized by the initial success of the prosecution." [18] Such a statement coming from this source is particularly indicative of the effectiveness of Federal intervention to change the pattern in the South, for the same author remarks that "the Ku Klux had always existed, but the organization was known as the 'patrollers'

[11] Congressional Globe, 41st Cong., 2d sess., pp. 3611–3613; Congressional Globe, 42d Cong., 1st sess., App., pp. 83–85, 317, 334, 429, 459, 475–477.
[12] 17 Stat. 13, April 20, 1871.
[13] Congressional Record, 42d Cong., 1st sess., appendix, pp. 83–85.
[14] See Flack, op. cit., pp. 226–249, for a full discussion of the debates on this bill and their significance in interpreting the fourteenth amendment.
[15] Homer Cummings and Carl McFarland, Federal Justice (1937), pp. 230–231.
[16] Quoted in Cummings and McFarland, op. cit., pp. 236–237.
[17] Annual Report of the Attorney General for 1871, p. 6. See Cummings and McFarland op. cit., pp. 238–239.
[18] Cummings and McFarland, op. cit., p. 237.

and was protected by public sentiment." He states that the then district attorney in Kentucky maintained that the wholesale outrages to Negroes "were no new thing in the South but were a commitment of the institution of slavery." [19]

The Civil Rights Act of 1875,[20] likewise shows the intent of those who framed and adopted the fourteenth amendment. It provided that all persons are "entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters and other places of public amusement," and made it a misdemeanor for any person to violate this right. The debates preceding passage of this act contain further elucidation by Members of Congress who participated in the adoption of the fourteenth amendment of their intent.[21]

All of this legislative history of the fourteenth amendment remained forgotten for years. But historians are today generally agreed that those who framed and adopted the fourteenth amendment intended to authorize the Federal Government to protect life and to do so whether or not the violation arose from State action or individuals acting in concert.[22] Historians are also agreed that none of the proceedings in committees or on the floor of Congress during the adoption of the amendment were considered by either the majority nor the minority of the Supreme Court in the Slaughter House or other early cases, where the first interpretations of this amendment by the Supreme Court took place.

As a matter of fact historians even assert that none of this material was presented to the Court by counsel for either side in the Slaughter House case.[23]

We believe that if a statute were adopted by Congress punishing violence or murder when committed against a person of a minority group because of his race, color, creed, or national origin it would today be upheld by the Supreme Court. A presentation to the Court of the explanations of the sponsors of the fourteenth amendment of their intent would go a long way toward convincing the Court that such a statute is constitutional. The present Court has an unexcelled record for overruling reactionary precedents and returning the original Constitution and its amendments to the purposes intended by its creators. Thus the commerce clause has become a grant of as yet, unlimited, power instead of a restriction. By 1946, "every decision which had invalidated a congressional exercise of the commerce power had been disapproved, or distinguished to death." [24] The guarantees of freedom of speech and press have been held protected by the fourteenth amendment, even when they take the form of picketing, with reversals of decisions invalidating State anti-injunction laws.[25] So on down the line, a white primary is invalid where as a few years ago a similar primary was valid,[26] agriculture regulated,[27] minimum wages fixed,[28] discrimination for union activity prohibited [29]—all reversals of prior positions. There is every reason to expect a similar victory in the field of congressional power to banish lynching.

Article VI of the Constitution provides that:

"All treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land."

And Article I, section 8, clause 10, empowers Congress:

"To define and punish * * * Offenses against the law of nations."

The Supreme Court has recognized that under these two sections Congress has broad powers to legislate as to matters of importance to our international affairs. Thus in *Missouri* v. *Holland*,[30] Mr. Justice Holmes, speaking for the Court, stated:

"If the treaty is valid there can be no dispute about the validity of the statute

[19] Ibid., p. 233.
[20] 18 Stat. 335, March 1, 1875.
[21] See Flack, op. cit., pp. 249–277.
[22] Horace E. Flack, the Adoption of the Fourteenth Amendment (1908), pp. 75–77, 81–85, 90, 232–237, 239; 242, 245, 247, 277; Carl Brent Swisher, American Constitutional Development (1943), pp. 329–334; Louis B. Boudin, Truth and Fiction About the Fourteenth Amendment, 16 New York University Law Quarterly Review (November 1938), 19; Howard Jay Graham, the "Conspiracy Theory" of the Fourteenth Amendment, 47 Yale Law Journal (January 1938), 371.
[23] Swisher, *op. cit.*, pp. 336–345.
[24] Robert L. Stern, the Commerce Clause and the National Economy, 1933–46, 59 Harvard Law Record, 645, 883, 946.
[25] Contrast *Thornhill* v. *Alabama*, 310 U. S. 88 with *Truax* v. *Corrigan*, 257 U. S. 468.
[26] Contrast *Smith* v. *Allright*, 321 U. S. 649 with *Grovey* v. *Townsend*, 295 U. S. 45.
[27] *Wickard* v. *Filburn*, 317 U. S. 111.
[28] *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379; *United States* v. *Darby*, 312 U. S. 100.
[29] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1.
[30] 252 U. S. 416.

under article I, section 8, as a necessary and proper means to execute the powers of the Government." [31]

"Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States." [32]

"It is obvious that there may be matters of the sharpest exigency for the national well-being that an act of Congress could not deal with, but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found." [33]

"No doubt the great body of private relations usually fall within the control of the State, but a treaty may override its power." [34]

Under these broad principles, never questioned or narrowed by any subsequent decision of the Supreme Court, we have merely to examine the Charter of the United Nations to find that the Senate, by ratifying it,[35] has raised to the stature of the supreme law of the land the obligation of the United States to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language, or religion." [36]

Moreover, article 56 pledges all members of the United Nations to take joint and separate action in cooperation with the organization for the achievement of this purpose. Clearly, we have here an adequate constitutional basis, either under the power to implement treaties or the power to define offenses against international law, for a statute protecting all individuals against any violence or threats of violence because of race or religion. Indeed, should Congress fail to take such action, it would have culpably failed to carry out the obligations which this Nation has assumed to the other peoples of the world.

TESTIMONY BEFORE COMMITTEE ON THE JUDICIARY ON WAGNER-MORSE ANTILYNCHING BILL, S. 1352, ON BEHALF OF NATIONAL COUNCIL OF JEWISH WOMEN, TUESDAY, JANUARY 27, 1948, BY MRS. LOUIS OTTENBERG, MEMBER, NATIONAL COMMITTEE ON EDUCATION AND SOCIAL ACTION AND MEMBER OF NATIONAL BOARD

The National Council of Jewish Women, an organization of 70,000 women in over 200 communities all through the country, wishes to go on record in favor of S. 1352, the Morse-Wagner antilynching bill.

The right of each individual to physical freedom, to security against violence, and to the orderly processes of law is vital to the stability of our democractic society. While most Americans have these rights, many of our people still suffer from the fear of violence or death at the hands of a mob or from brutal police treatment.

Lynching and mob violence have been blights on our democratic record throughout our history. Though there has been a substantial and steady decline in the number of lynchings which have occurred in the past two decades (from a total of 64 in 1921 to an average number of no more than 6 per year since 1940), there has not yet been a year when America was wholly free of lynchings. The decline in the number of such crimes is encouraging, but so long as one individual is threatened by mob action, and so long as the existing law is not capable of coping with the perpetrators of such violence, we are not fulfilling our obligations to all our citizens. If the States do not protect the rights of the individual under custody, then there must be Federal legislation which will safeguard these rights and give the individual legal recourse.

The absence of antilynching legislation on the Federal statute books is a serious lapse, and one which leaves us open to criticism. While our record in the field of civil liberties has been on the whole an excellent one, and while the greatest number of our citizens enjoy freedoms which are found nowhere else in the world today, we are nevertheless subject to criticisms by all nations, totalitarian as well as democratic, if a single one of our citizens is denied the fundamental rights of personal safety under law.

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[31] At. p. 432.
[32] At. p. 433.
[33] At p. 433.
[34] At p. 434.
[35] The Senate ratified the United Nations Charter as a treaty on July 28, 1945, 91 Congressional Record, 8189–8190.
[36] Art. 55, c.

We must silence those critics of the American way of life who point to the "lynchings in the South" as the prime example of our treatment of minorities, and who exploit the occasional case of mob violence as the rule, rather than the exception.

We must eliminate this powerful propaganda club held over our heads, and the way to eliminate it is by declaring lynching a Federal offense, carrying specified provisions for enforcement and punishment.

The President's Committee on Civil Rights called for the enactment of an antilynching law. The Wagner-Morse bill embodies all the principles set forth in the committee's report, by giving a broad definition of lynching providing for punishment of the lynch mob, as well as considering the officers of the law liable for any dereliction of duty which leads to violence; providing for compensation to the victim or his family; and assuring that all criminal prosecutions under the act would be brought in a Federal district court. We believe that all of these provisions are essential effectively to curb and punish the crime of lynching.

In line with its traditions of working for the fundamental liberties of all men and the rights of minorities, and recognizing that a lynching anywhere in the United States will have political and social repercussions all over the world, the National Council of Jewish Women calls for immediate passage of S. 1352, for only by the elimination of the troublesome blemishes on our national complexion can we hope to gain the confidence and trust of the peoples of the world.

RESOLUTION OF THE AMERICAN CIVIL LIBERTIES UNION ON S. 42, S. 1352, S. 1465, JANUARY 1948

The American Civil Liberties Union has consistently supported all antilynching bills in Congress, in order to secure Federal intervention in all cases of mob violence against Negroes and others. We note with satisfaction the recent report of the President's Committee on Civil Rights, which heartily endorsed Federal antilynching legislation.

We have carefully studied S. 42. S. 1352, and S. 1465, which we find adequate and proper legislation to remedy a great evil. We do not believe that the constitutional objections raised to this exercise of Federal power are valid. The tragic record in many States of indifference, inaction, and, in some cases, of active participation by State officers in mob violence, would leave the National Government derelict in its duty if it did not intervene.

Furthermore, the vulnerability of the United States on racial matters is now apparent in dealing with world issues of racial justice and equality. Enactment of the proposed legislation will in large part answer attacks on the sincerity of our democratic professions.

We therefore urge as "must" legislation the immediate passage of antilynching legislation.

THE PROTESTANT COUNCIL,
OF THE CITY OF NEW YORK.
New York 5, N. Y., June 20, 1947.

Hon. ALEXANDER WILEY,
Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR WILEY: This commission has adopted the attached resolutions which I am passing on to you. They endorse the Federal Antilynching Act (H. R. 3488 and S. 1352), the bill creating an Evacuation Claims Commission (H. R. 2768), and the bill granting the Attorney General power to stay the deportation of persons not allowed to become citizens because of their race (H. R. 2933).

The members feel a deep concern for the inalienable rights and liberties of all persons in a Christian and democratic country. These rights must be granted by the Federal Government, when denied by local officials, and when our national policy places undue hardship on individuals.

We urge passage of these bills in this session of Congress so that justice will be partially granted by them and we count on you to exert your efforts on their behalf.

Sincerely yours,

ROBERT W. SEARLE, *Executive Secretary.*

RESOLUTION ON THE FEDERAL ANTILYNCHING BILL BY HUMAN RELATIONS COMMISSION, THE PROTESTANT COUNCIL OF THE CITY OF NEW YORK

The human relations commission of the Protestant Council of the City of New York wishes to record its endorsement of the Federal antilynching bill (H. R. 3488 and S. 1352) and to urge passage of this bill at this session of Congress.

Lynching is a fundamental denial of human right. It is a defiance of law and the processes of justice. It is also a shame of America which, flaunted before world, does much to undermine faith and hope in democracy.

Since 1882 there have been 4,932 lynchings in the United States and in 99.2 percent of these no punishment resulted. Recent cases have evidenced the inadequacy of protection furnished American citizens by local and State police authorities and the inadequacy and futility of local efforts at prosecution.

Because the police power of the States is so obviously and flagrantly derelict in the prevention of lynching, the commission believes that for the good name of the Nation and for the protection of its citizens, lynching, like kidnaping, should be subject to Federal action.

NATIONAL ASSOCIATION OF COLORED GRADUATE NURSES, INC.,
New York 19, N. Y., July 21, 1947.

Senator ALEXANDER WILEY,
Chairman, Senate Judiciary Committee. Senate Chambers,
Washington, D. C.

MY DEAR SENATOR WILEY: At the recently held biennial convention of the National Association of Colored Graduate Nurses, held in Atlanta, Ga., it was unanimously voted to send the following resolution:

"Whereas the incidence of lynchings has taken a sharp rise in this country during the recent period; and

"Whereas such atrocities are a blot on the entire Nation; be it therefore

"*Resolved*, That H. R. 3488 and S. 135 be immediately enacted into law and that the Senate rules governing cloture be revised in order to prevent the filibustering which has caused the defeat of previous bills."

This resolution was adopted by nearly 400 representatives from 26 States representing 8,000 Negro nurses in the United States.

We wish to express our deep appreciation to you, Senator Wiley, for coauthoring this excellent piece of legislation and we pledge our full support in speeding its passage.

We would also like to have our resolution incorporated into the House hearings report.

Respectfully,

Alma Vessels,
ALMA VESSELS, R. N.,
Executive Secretary.

To the Honorable Judiciary Committee and Congress of the United States of America, Washington, D. C.:

SOUTHERN ASSOCIATION FOR THE IMPROVEMENT OF COLORED CITIZENS AND GOOD CITIZENSHIP, INC., BY REV. G. M. BANKS, SUPREME PRESIDENT; B. L. ESTES, SUPREME SECRETARY; J. H. MOTEN AND RUBYE BAILEY, TENNESSEE; R. L. THOMAS AND ALTEE CROWE, MISSISSIPPI; J. D. DANIELS AND REV. E. L. HARRIS, ARKANSAS; REV. E. SIMMONS AND TEASEY BIGGINS, INDIANA, PETITIONERS, *vs.* EX PARTE

Petitioners would most respectfully show unto the honorable Judiciary Committee and the Congress of the United States of America as follows:

I

That the petitioners, Southern Association for the Improvement of Colored Citizens and Good Citizenship, Inc., is a corporation incorporated and organized in Tennessee and whose principal office is in Jackson, Madison County, Tenn., and operating in several States of this United States for good will, peaceable relationship among the people and races that make up and constitute this great

Nation; and the names of persons herein represent in an official capacity in this organization and represent thousands of persons connected therein.

II

Petitioners would show that bills have been introduced into Congress time and again in and out since 1916, and possibly prior thereto, on the subject and whose subject matter was laid down for the prevention of lynching; and would further show that both the Democrat and Republican Parties have introduced bills of this nature and it appears to the petitioners that these bills and this subject have been made a political football by both parties and the same at the expense of the taxpayers and the expense of human life and human misery and would show and appear to petitioners that neither party has been interested enough to pass a bill of this nature.

III

Petitioners would further show that the Negro people, persons of color of African descent, commonly known as Negroes or colored people, whose ancestors were brought to this our country in 1619, involuntarily and against their will, serving in slavery for a number of years and liberated by our great Government and who wrote them citizens under the law, and has endeavored to educate and christianize this race and group into a full-fledged American citizenship for which the petitioners are thankful; and would show that this group of people and citizens have responded to every call of emergency that our Government has made, and constitute some of the most loyal citizens of this great Government.

IV

Petitioners would further show that this group of citizens as herein mentioned have been subjected much more than any other citizens of this country to the crime of lynching. Lynching, as petitioners understand it, is one or more persons who conspire with themselves to take the laws into their own hands and to administer execution without due process of law and depriving or attempt to deprive the human being of his life without due process of law or to take from the officers of the law and from places of custody, jails, houses of correction, and other places of confinement where prisoners are being held, awaiting the day of trial where he shall be brought into a court of competent jurisdiction and be tried by a jury of his peers, freeholders of the State and householders of the county and the body, as herein mentioned, break open or burglarize the jail, and with authority of the custodian of said institution take the subject out and deprive him of his life without the sanction of law constituttes a lynching.

V

Petitioners would further show that thousands of their constituents have been carried to an untimely death by the method of execution and that the States—many of them—have not attempted to ameliorate this heinous crime and officers of the law and the sovereign States of America have not used the strong arm of the law and the extent of their authority to prevent this crime from being committed, and it appears in the light of all the circumstances that the sovereign States have compromised and condoned, upheld, and approved these lawless acts; and would show that this is mass murder and making criminals out of orderly communities and the blood stains of these victims shall be on their hands or on the hands of their children and would further show that the time has come that your petitioners now call upon the strong arm of the National Government, the greatest government in the world, with its far-reaching powers and authorities to take appropriate action in this matter, that the lives of its citizens might be protected and that lives of prisoners might be protected until they can be given a fair and impartial hearing in a tribunal of competent jurisdiction.

VI

Petitioners would further show that it has been charged that bills of this nature have been directed at our southern country, fully realizing and making a clear survey of the matters hereinabove set forth would show that these acts and the heinous crimes as herein mentioned have occurred in every part of the United States and the records will disclose the same; but would show that the death of

many of these bills from 1916 to the present moment have been opposed and laid at the doors of our southern representatives, but your petitioners do not believe that those representatives who opposed this piece of legislation would stand up and be counted in favor of a lynching in the States which they represent, but for political and sundry reasons have talked several of these bills to death and buried them in an untimely grave at the expense of the taxpayers of his State of which our group are a part, at the expense of the United States Government whose time is involved in any filibuster, at the expense of human misery and torture and the untimely death of many innocent people whose blood cries from the ground.

VII

Petitioners would further show and pray that every Senator and Representative in Congress will stand up and be counted either for lynching or against lynching and go on record in the Congressional Record to be for lynching or against it; too much criticism and reflection have been thrust at our southern country and the Nation at large on account of this crime and to remove this blot and stain from a great government as ours, which God has so ordained and set up to write the peace of the world; and for the protection of these loyal citizens true and tried, sterling in their nature, who can be trusted in every emergency that our Government has entered or will enter. We call upon every Senator and Representative unanimously to support this legislation as will appear in the Senate of the United States.

VIII

Petitioners would further show that invariably many organizations, abolition and nonabolition, some for the express purpose of bringing freedom to this underprivileged group herein mentioned, and others to intimidate and strike fear to the hearts of the same group and each claim to have a purpose of freedom and 100-percent Americanism and other groups come along to rule or ruin and many are charged to be communistic in their idealogy, and under careful scrutiny by congressional investigating committees and set out to have subversive elements and tendencies, but would show that this organization has never been charged with being abolition or nonabolition; nor having communistic tendency or containing subversive elements, and would further show that no person having communistic ideas, tendencies, or otherwise can become a member of this organization.

PREMISES CONSIDERED

Petitioners pray the Judiciary Committee and Congress—

1. That this petition be accepted and filed with the Judiciary Committee considering this piece of legislation and become a part of their proceedings and that a copy of the petition be placed on the desk of each Senator when this bill is considered by the Senate.

2. That no Senator will take the responsibility of talking this piece of important legislation to death at the expense of the taxpayers of this Government and the State that he represents and at the expense of human misery and death.

3. That in the event of the anxiety and ambition of some Senators and Representatives who desire from a political reason to destroy this piece of legislation by talking it to death as prescribed by the rules of the Senate, that the cloture rule be invoked upon him and his case be referred to the people and voters of his State to be settled.

4. That petitioners be permitted to offer evidence before this honorable committee in the form of oral testimony or affidavits and be heard before said committee.

5. That they pray to the God who established this country of free religion, freedom of worship, freedom of speech, freedom of thought, freedom of action, for such other relief as they are entitled to.

Southern Association & Good Citizenship, Inc.: Rev. G. M. Banks, Supreme President; B. L. Estes, Supreme Secretary; Tennessee—J. H. Moten, President; Ruby Bailey, Secretary; Mississippi—R. L. Thomas, President; Atlee Crowe, Secretary; Arkansas—J. D. Daniels, President; Rev. E. L. Harris, Secretary; Indiana—Rev. E. Simmons, Teasley Biggins.

Legal department: L. P. Harden, Tennessee; B. A. Green, Mississippi; R. H. Craig, Tennessee; W. S. Henry, Indiana, attorneys.

THE NATIONAL BOARD OF THE YOUNG WOMEN'S CHRISTIAN ASSOCIATIONS OF THE UNITED STATES OF AMERICA,
New York 22, N. Y., February 5, 1948.

Senator ALEXANDER WILEY,
Chairman, Senate Judiciary Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR WILEY: The Young Women's Christian Association includes in its membership all kinds of people. Many of its women and girls stem from the dominant ethnic and religious groups of the country. That is, most of them are native-born or second generation white people who are Protestants. Our most recent national reports show that, in addition, our membership of over 600,000 includes 10,000 foreign-born white people, 83,000 Negroes, 400 American Indians, and 5,000 Orientals.

These membership figures present only a small part of our total constituency. Within our thousands of volunteers and participants in Young Women's Christian Association service, education, and recreational programs throughout the country are thousands of other women and girls, and many of them are members of minority groups.

The concerns of these people are and must always be the concerns of the Young Women's Christian Association. Our interest in the bill to provide Federal protection against lynching and mob violence is a living, vital interest. It grows out of our knowledge of what is happening to people in the 435 communities throughout the country where we are at work. It roots in the daily lives of thousands of persons for whom and through whom we exist. It is motivated by our Christian purpose which will not let us rest so long as the spiritual welfare of any of our constituents is jeopardized by fear. We are concerned about all facets of a full, free, abundant life for every individual.

For many years our public affairs program has included a section on civil liberties and democratic rights which has given our national movement a charter to support proposals for the solution of our Nation's basic problems in human rights and to secure for Negroes and other minorities equal justice under law.

In March 1946, the Young Women's Christian Associations of this country met in national convention and reaffirmed our belief that the integrity of our democracy is tested by its treatment of minorities. We adopted a public affairs program that includes a section stating:

"Civil liberties are denied to millions of human beings in a world struggling to be free. Therefore we will work to support efforts to secure protection by Federal and State legislation against lynching and other forms of mob violence and work for equal enforcement of law as it applies to all groups in the population."

We call this to your attention now in connection with the bills your committee has under consideration (S. 42, S. 1465, S. 1352), because we are convinced that legislative sanction of antilynch policy is the surest safeguard to the personal freedom for which the United States of America traditionally has stood. We know what it means to have millions of our citizens live under threat of lynching and mob violence. We deplore the instances in which Americans have taken the law into their own hands, and, despite the statistical decrease in lynchings, the detrimental social climate yet embraces us all. We want to see law and order in a free society. We believe that the proposed legislation, S. 1352, without deletions or substitutions, is essential to provide law and order in a free society.

In addition to our desire for protection of each individual, we are anxious to see our democracy meet the challenge of our day. We realize that lynching is the high-water mark of the vigilante spirit. It sows the seeds for distrust and impatience with democratic process. In these days when democracy is under pressure in high places throughout the world, we must stamp out the intolerance of mob action wherever it makes its threat. Legislation against lynching will help us build the dynamic democracy which alone can withstand pressures from without.

In a civilized nation like ours, no accusation of crime can be so terrible as to justify punishment without legal proof of guilt. Our tradition of Anglo-Saxon justice that goes back to the Magna Carta holds the right of every man accused of a crime to a fair trial by his peers. In supporting the antilynch bills we seek to vindicate those practices which are the hallmark of any civilized government.

Our national program places considerable emphasis on social education. We try to educate our membership to the full meaning of democracy and Christianity. Throughout the country, we find it difficult to carry conviction with young people who are aware of the serious discriminations and violations of civil liberties within our American life. We know that sound education involves experience;

these cannot be divorced from each other. The opportunities we provide for people of all racial and economic groups to work together on common problems provide education for democratic living; they replace prejudice with understanding. The passage of Federal legislation against lynching would offer us and all other organizations a challenge for better interpretation of democratic values and a sound basis for providing experience as we help citizens learn to take their responsibility for living within the law. Indeed, the bills to stop lynching will help our country narrow the gap between our stated beliefs and actions, thus providing a setting for Americans to learn a basic principle of democracy.

As an international organization, the Young Women's Christian Association continues to work to help build a world of peace and justice. We realize that our country's contribution to a world order in which the administration of justice and the participation of all peoples must be on a basis of equality, depends upon what we accomplish in community relations at home. We know that the eyes of the world are upon us; our record of treatment of minorities falls far short of the standards of democracy. We are convinced that the bills to abolish lynching and mob violence in our national life move us toward the fulfillment of the obligations our Government has undertaken by the ratification of the United Nations Charter to promote "universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, and religion."

Sincerely yours,

CONSTANCE W. ANDERSON
Mrs. Arthur Forrest Anderson,
President.

The following statement on antilynching legislation was today submitted to the Senate Judiciary Committee by Robert Lathan, vice president of the Food, Tobacco, Agricultural, and Allied Workers Union, CIO:

"The Senate Judiciary Committee is once again considering passage of a Federal antilynching law. It is my duty to inform the Senators that the American people are tired of mere words and promises on this issue.

"It is now time for action, before our people come to the conclusion that neither of the major political parties means to carry out repeated campaign pledges to end this national shame.

"Our union, the Food, Tobacco, and Agricultural Workers, CIO, has repeatedly gone on record demanding a Federal antilynching law with teeth in it. We have so testified before this committee on at least half a dozen occasions. Each time our members have been disappointed as the Senate fails to act.

"Failure to pass a strong Federal antilynching law now, providing criminal penalties for violators, will be seen by our members as final proof that neither the Republican Party leaders in Congress nor the Democratic Party leaders in the administration mean what they say when they promise our people relief.

"Fine words in Presidential reports on civil rights and fine promises in campaign platforms will not save the lives of our people. Only action to punish lynchers and prevent future lynchings will."

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TO PROTECT CITIZENS AGAINST LYNCHING

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

SIXTY-FIFTH CONGRESS

SECOND SESSION

ON

H. R. 11279

Serial 66

STATEMENTS OF MAJ. J. E SPINGARN AND CAPT. GEORGE S HORNBLOWER

JUNE 6, 1918

WASHINGTON
GOVERNMENT PRINTING OFFICE
1918

COMMITTEE ON THE JUDICIARY.

HOUSE OF REPRESENTATIVES.

SIXTY-FIFTH CONGRESS.

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TO PROTECT CITIZENS OF THE UNITED STATES AGAINST LYNCHING IN DEFAULT OF PROTECTION BY THE STATES.

SERIAL 66.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Thursday, June 6, 1918.

The CHAIRMAN. There are present two gentlemen from the War College who have been invited by Mr. Dyer to discuss a bill which he introduced.

Mr. DYER. Mr. Chairman, there are two gentlemen here, Maj. Spingarn and Capt. Hornblower, and they desire to present some facts in regard to this proposed legislation to protect citizens of the United States against lynching, etc.

STATEMENTS OF MAJ. J. E. SPINGARN, UNITED STATES INFANTRY, R. C., MILITARY INTELLIGENCE BRANCH, EXECUTIVE DIVISION, GENERAL STAFF, AND CAPT. GEORGE S. HORNBLOWER, UNITED STATES NATIONAL ARMY, MILITARY INTELLIGENCE BRANCH, GENERAL STAFF.

The CHAIRMAN. Major, we will be glad to hear you.

Maj. SPINGARN. Mr. Chairman and gentlemen of the committee, the attention of the Military Intelligence Branch was called to Representative Dyer's bill, H. R. 11279, by reason of the fact that our branch has evidence of a great deal of bitterness among the colored

people as a result of lynching, and, as a part of the military statesmanship of the General Staff, it was thought necessary that some kind of counter offensive should be started against this disaffection by having some such bill passed. There is no question, so far as we are concerned, of the disloyalty of the colored people, but there is an unusual amount of bitterness which is spread by some 200 colored newspapers, most of which are absolutely unknown to the white people of the country; but these newspapers are read not only by colored civilians, but also in the Army camps by the colored soldiers, and the colored soldiers have more time to read now than they ever had before. This bitterness is also spread from mouth to mouth.

Mr. WHALEY. Where is this disaffection, or where do you find it mostly?

Maj. SPINGARN. It is virtually everywhere. I was going to read a number of reports from all over the country, but Representative Dyer tells me that you can only give me 10 minutes.

Mr. IGOE. I suggest that we have an executive session if the major is going to disclose some secret facts in the possession of the military authorities.

Mr. GARD. Do you want to have this an executive session?

Maj. SPINGARN. This information may be so worded that there will be nothing about it that need be kept private.

Mr. WALKER. Have you gone into the constitutionality of this proposition?

Maj. SPINGARN. Capt. Hornblower, of the Military Intelligence Branch, has done that, and if you will give him the time he will discuss that thoroughly. Now, as I said, we believe that the way to counteract this bitterness is not by suppressing newspapers, but by a counter offensive which would strike at the cause of the disaffection, and so our attention was attracted to the Dyer bill. We found, however, that the Dyer bill was based on the fourteenth amendment of the Constitution, or, in other words, that it was not a war measure, and our interest in this matter is entirely military. We wish to have an antilynching bill passed, because lynching may be regarded as interfering with the success of the United States in the war.

Mr. REAVIS. Why would that interfere with the success of the war any more than the commission of murder by any other method?

Maj. SPINGARN. I was coming to that. Capt. Hornblower, of the Military Intelligence Branch, was requested to draw a bill based not on the controversial fourteenth amendment but on the war powers granted by the Constitution. We approve the principle of the Dyer bill, and something of that sort ought to be enacted, but we think that we have substituted for it something which is more available at this time, because it is distinctly and only a war measure, intended to accelerate the prosecution of the war, and nothing else. Therefore this tentative draft was made by Capt. Hornblower, which reads as follows:

A BILL To punish the crime of lynching in so far as such crimes tend to prevent the success of the United States in war.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the United States is at war whoever shall participate in any mob or riotous assemblage whereby death or mortal injury is intentionally caused to any man or woman employed in the service of the United States, or any man liable to service in the military forces

of the United States under the act approved May 18, 1918, entitled "An act to authorize the President to increase temporarily the Military Establishment of the United States," or under any present or future statute of the United States or any person held under arrest by or as a prisoner of or in internment by the United States, or the wife, husband, brother, sister, father, mother, son, daughter, uncle, aunt nephew, niece, or first cousin, whether of the whole blood or half blood, of any person in the military or naval forces of the United States or liable to service therein, as aforesaid, shall be deemed guilty of a capital offense against the United States and shall upon conviction be punished in accordance with the punishment prescribed for the crime of murder under the United States Criminal Code.

Mr. WALSH. May I ask you a question at this point?

Maj. SPINGARN. Certainly.

Mr. WALSH. Suppose, for instance, there is a colored person in the United States Army and in camp now, and a crowd should assemble and get by the guards and take that colored person out and hang him to a tree. Do I understand that the Government would be without authority to punish those people at the present time?

Maj. SPINGARN. The Government has authority to punish the crime that would be committed in that particular case, but suppose——

Mr. WALSH (interposing). Suppose a young man were walking up yesterday to register, and as he came out, after he had registered, he was seized and lynched. Would the Government be without authority to punish the people who lynched him?

Maj. SPINGARN. I will refer that question to Capt. Hornblower.

Capt. HORNBLOWER. I am afraid that the difficulty about that is that the statute which would cover that offense would not impose adequate punishment.

Mr. WALSH. Would not that be interfering with the recruiting of the Army?

Capt. HORNBLOWER. Perhaps so, but the penalty is only six months' imprisonment.

Mr. REAVIS. If it be true that the Government has no jurisdiction over an offense of that kind, then by what authority does the War Department consider those boys who register as deserters if they do not show up in the draft? If they are not in the drafted Army from the time that they are registered, so as to make crimes committed against them amenable to the Federal law, then by what authority does the War Department consider them in the Military Establishment to the extent of considering them as deserters when they do not appear?

Capt. HORNBLOWER. My opinion is that they are not considered as deserters until they have actually been inducted into the military service. They are considered to be draft evaders under a special provision of the selective-draft act if they fail to appear. That is their status from the time they are registered until they are inducted into the service if they fail to respond to the summons, but there is a clear distinction between a man's status between the time he is registered and the time he is inducted into the service and his status after he is inducted into the service.

Mr. REAVIS. If the War Department does not consider a registered man as a part of the Military Establishment, upon what theory of the Constitution would you make murder committed on him a Federal offense?

Capt. HORNBLOWER. On the theory——

Mr. REAVIS (interposing). On the theory that he might at some time in the future become a part of the Military Establishment?

Capt. HORNBLOWER. Upon the theory that the power to raise and maintain armies carries with it power to punish those acts which interfere with the raising and maintaining of armies. It is the same power that you gentlemen exercised when you made it a Federal offense to encourage a man not to register, and which authorizes you gentlemen to make it a Federal offense to murder a man who is about to register.

Mr. REAVIS. Let us for the moment eliminate from the discussion the idea of lynching him by violence. Let us suppose there is an affray participated in by a man who has registered and another citizen of the Republic, and the man who registered is killed. Do you think that under the Constitution you could make that act punishable under the laws of the Federal Government?

Capt. HORNBLOWER. If it was in time of war, then, as a part of the war powers conferred by the Constitution, I think it could be, just as I think it was constitutional for you gentlemen to provide those other measures under the war power.

Mr. REAVIS. I will be very much interested in hearing your argument on that proposition.

Capt. HORNBLOWER. I had better wait until Maj. Spingarn completes his statement.

Mr. THOMAS. Who drew that substitute bill?

Maj. SPINGARN. Capt. Hornblower, of the Military Intelligence Branch.

Mr. THOMAS. Is he a lawyer?

Maj. SPINGARN. Yes, sir; or he was once.

The purpose of this bill is, first, to defend soldiers. Obviously, any man who kills a soldier is interfering with the prosecution of the war. In the second place, its purpose is to defend the potential soldier. Every man who in any way interferes with or reduces the possible military personnel or matériel of the Nation is in some measure interfering with the prosecution of the war. In the third place, the purpose of the bill is to protect the families of soldiers or potential soldiers. The reason for that is plain: The Government has accepted the principle that a soldier can not fight properly or efficiently if he is worrying about the condition of his family at home. The Government has proved its acceptance of that principle by the enactment of the war-risk insurance bill and other measures, whereby the soldier is required to allot a certain part of his pay to his family, and whereby the Government itself allots certain sums of money in addition to the family of the soldier, and whereby the Government does everything in its power to see that the dependents of the soldiers shall be taken care of. In the same way, and according to the same principle, the Government should protect the families of soldiers and potential soldiers in order that the soldier himself shall not be worried about his people at home, but shall be able to give his whole attention to the war.

Mr. THOMAS. Do you think that a soldier, or a potential soldier, as you call him, if he himself obeys the laws, is in any danger of being lynched anywhere?

Maj. SPINGARN. His family may be lynched while he is away.

Mr. THOMAS. If they obey the laws?

Mr. SPINGARN. I am not able to sift all the evidence in the 3,000 cases of lynching that have occurred since 1885, but, in many cases, at least, I think that some of the men lynched have not disobeyed the law.

Mr. DYER. At any rate, a man who is lynched is certainly not punished according to law.

Maj. SPINGARN. Exactly.

Mr. DYER. There is no law that I have ever heard of that authorizes lynching in this country, no matter what a man does or does not do.

Mr. THOMAS. In many cases it should be done. I think that a man who is guilty of rape should be lynched.

Mr. REAVIS. The bill proposed by you would punish under Federal law the murder of one who happens to be the cousin of a man who might at some time in the future be a soldier, would it not?

Maj. SPINGARN. That is very true.

Mr. REAVIS. Do you think that could be done under the Constitution of the United States?

Maj. SPINGARN. Yes, sir; under the war powers granted by the Constitution.

Mr. DYER. I will say to the gentleman from Kentucky that the records, the undisputed records, of lynchings during the last 10, 15, or 20 years show that in not 10 per cent of the lynchings was there even any charge of rape, so that that argument does not hold very good.

Maj. SPINGARN. We have no desire to raise the controversial question of lynchings in the past. Our whole purpose is to make the prosecution of the war more effective by stopping something which will interfere with the prosecution of the war or with the peace of mind of those engaged in the prosecution of the war. The Government's attempts throughout to protect the soldiers against such worries have been continuous, and not only is the principle just, but since the Federal Government—and not the State government—takes the soldier away and, in so far as he is taken away, withdraws that man's protection from his family, we believe it is the Federal Government's duty to provide for the protection which that man, in his absence, can not give to his family. That is the justification for including the family.

Mr. THOMAS. Has that bill ever been submitted to the President?

Maj. SPINGARN. No; it has not.

Mr. WALSH. Has this unrest, which you say has been aroused, resulted in any cases of insubordination on the part of these soldiers?

Maj. SPINGARN. There have been a few cases of insubordination on the part of soldiers, but I am particularly interested in the effect of the disaffection outside of the Army.

Mr. WALSH. What is the need, then, if it is simply to protect the family of the soldier, to provide for all these various relations? Why not make it the wives, children, or dependents? What is the need of putting in the uncle, the aunt, the cousin, the nephew, and niece?

Maj. SPINGARN. Your suggestion is a very good one. What we are after is the principle of protecting the soldiers.

Mr. MORGAN. Has the War Department any evidence, since the beginning of the war, that there has been any increase in the number of lynchings?

Maj. SPINGARN. I have reason to believe 212 lynchings of colored people have taken place since this country declared war against Germany.

Mr. MORGAN. Does the evidence show, since these colored men have been taken in as soldiers in the National Army or by enlistment, that these lynchings have been caused by prejudice and because they have become soldiers, or anything of that kind?

Maj. SPINGARN. I should say that it does. I will read one expression.

Mr. MORGAN. These 212 lynchings have not been of soldiers?

Maj. SPINGARN. No; the lynchings of civilians.

The CHAIRMAN. Mr. Morgan asked whether those lynchings had taken place because the men had become soldiers or whether the present lynchings had anything to do with the Government at all?

Maj. SPINGARN. No; the lynchings had nothing to do with the fact that the men were to become soldiers.

Mr. MORGAN. I wanted to ascertain whether the fact that the colored people were becoming soldiers had increased the number of lynchings.

Maj. SPINGARN. I can not express any definite opinion on that subject. I would like, however, to read a quotation——

Mr. THOMAS (interposing). Before you read that I would like to ask Capt. Hornblower a question. Captain, I understand you drew this bill?

Capt. HORNBLOWER. Yes, sir.

Mr. THOMAS. You claim it to be constitutional?

Capt. HORNBLOWER. I think it is; yes.

Mr. THOMAS. I do not wish to ask an impertinent question at all, but I would like to know your age and how long you have practiced law?

Capt. HORNBLOWER. For 10½ years.

Mr. STEELE. Have you prepared a brief on this question?

Capt. HORNBLOWER. No; I prepared this draft very hastily and in connection with a great deal of other work.

Mr. DYER. Let me state, for the benefit of Mr. Steele and the other members of the committee, that it was not expected at this time to have a hearing upon this bill nor upon the constitutionality of it. I will be fully prepared, as soon as the opportunity is presented later on, to present the legal aspect through lawyers of ability and who have studied this thoroughly. These gentlemen are here simply for the purpose of presenting the importance of some bill along this line as a war measure, but not in regard to any special bill.

Maj. SPINGARN. Let me say that I am not a lawyer.

Mr. DYER. They are presenting it as a war measure.

Mr. IGOE. I suggested a few moments ago that perhaps an executive session would be better. The reason for that was that I wanted to find out whether this matter had been discussed particularly at the War College. Is this the individual interest of yourself and Capt. Hornblower, or is it a matter that has been taken up officially there and is it a matter which the officials at the War College feel should be brought to the attention of this committee? Has that been discussed?

Maj. SPINGARN. I am not authorized to say what takes place inside of the military intelligence branch.

Mr. IGOE. The reason I asked for an executive session was because it is a matter of very great importance to me personally if the officials there feel that some legislation of this kind is necessary; and, if that is so, I think the committee is entitled to have the views of the officials at the War College.

Mr. STEELE. You could state whether or not this bill has the sanction of the War College.

Maj. SPINGARN. My presence here has the sanction of the Military Intelligence Branch of the General Staff.

Mr. STEELE. And you are speaking for that branch?

Maj. SPINGARN. For that branch; yes, sir.

The CHAIRMAN. Who composes that branch?

Maj. SPINGARN. All officers engaged in military-intelligence work.

The CHAIRMAN. Who is the head of it?

Maj. SPINGARN. Col. Van Deman was the head until a few days ago, and he has been succeeded by Col. Churchill

The CHAIRMAN. How many men are engaged in this service, if you know?

Maj. SPINGARN. In the intelligence service?

The CHAIRMAN. Yes.

Maj. SPINGARN. I should say about 130.

Capt. HORNBLOWER. I do not know how many men are in the service throughout the country generally, but we have about 140 officers in Washington connected with this branch.

The CHAIRMAN. Do you mean to say that these officers have gotten together and passed upon this matter?

Capt. HORNBLOWER. No, sir; that is never the way a thing works in the Army. Maj. Spingarn, who had been in command of a battalion of infantry at one of these cantonments, and who had to undergo a surgical operation and therefore was transferred to this branch, was ordered by the chief of this branch to look into this question of negro subversion, which is one of the subjects that falls within the jurisdiction of the chief of this branch. That is a part of what we call the negative intelligence work, the countering of the enemy's efforts. The Secretary of War directs the Chief of Staff to counter the enemy's secret efforts in this country; the Chief of Staff directs the Chief of Military Intelligence to do so and the Chief of Military Intelligence appoints his officers and orders them to take charge of this or that particular feature of it. He ordered Maj. Spingarn to take charge of this because of the major's special qualifications for studying this subject. Then he approved the major's plans in regard to countering the enemy's propaganda on this subject.

Mr. IGOE. Then you gentlemen are here officially representing the branch of the Army which has charge of this particular subject?

Capt. HORNBLOWER. Yes, sir.

Mr. IGOE. And you are speaking for that branch of the service?

Capt. HORNBLOWER. That is my understanding. Is not that true, Major?

Maj. SPINGARN. I think so.

Mr. MORGAN. It is understood that you were to come before the committee and present the matter by your superiors?

Maj. SPINGARN. I have the permission of my superiors to appear here.

Capt. HORNBLOWER. And I am here under Maj. Spingarn's orders, and simply acting as his assistant.

Mr. THOMAS. Capt. Hornblower is the author of this bill. He seems to be a very intelligent gentleman; he has had 10½ years' experience in the practice of law and ought to be amply qualified, and I take it is, to discuss this question from the constitutional standpoint. He claims it is constitutional. At first glance I do not believe it is constitutional. So far as I am individually concerned I am willing to do anything or vote for any sort of a bill in order for us to win this war. That is the first thing. I think that Capt. Hornblower ought to file a brief discussing the constitutionality of this question, and I would be glad if he would do so.

Capt. HORNBLOWER. I will be very glad to do that, sir.

Maj. SPINGARN. Capt. Hornblower will present a brief on the constitutionality of the bill at a later meeting, if you will permit him to do so.

Mr. DYER. I move, Mr. Chairman, that the brief to be presented by Capt. Hornblower at the request of a member of the committee, the gentleman from Kentucky, be printed in the hearings and in the proceedings.

Mr. GARD. There is no objection to that on the part of any members of the committee, I assume, or to anything that these gentlemen want to incorporate in their statements.

Mr. THOMAS. What State are you from?

Capt. HORNBLOWER. New York.

Maj. SPINGARN. Do you wish me to read some of the evidence which I have or do you wish me to simply incorporate it in the record?

Mr. IGOE. Is there anything confidential about it?

Maj. SPINGARN. No; it has been expurgated so that nothing is left in the evidence that is confidential.

Mr. IGOE. I suggest that the evidence be incorporated without reading it.

Mr. GARD. You might read one statement, so that we will know something about it.

Maj. SPINGARN. Here is the sort of report that has come to my attention:

> Mr. and Mrs. — —, of ———, state that their colored maids are demoralized by reports of treatment of negroes here and abroad. Their friends state that this condition is general in this neighborhood.

Mr. GARD. Where is that from?

Maj. SPINGARN. I can not tell you.

Mr. IGOE. What do they mean? What kind of treatment?

Maj. SPINGARN. Well, in most of these cases the apparent source of demoralization is the question of lynching.

Mr. GARD. But they do not lynch them abroad?

Maj. SPINGARN. No; but German agents have apparently circulated rumors regarding the treatment of colored troops abroad. Of course, these rumors are absolutely false.

Mr. IGOE. I have had a complaint from a man in the service in regard to the treatment of negro troops, the complaint being that colored men of college education are not given any opportunity whatever of being assigned to colored regiments where their education would fit them for certain noncommissioned ranks or better. Would that be sort of complaint that was mentioned in that communication?

Maj. SPINGARN. No. The rumors that are spread in regard to the treatment of colored troops abroad are false, and they are of such a character that we do not care to have them spread further. These rumors have been spread throughout the country apparently by German agents, and are to the effect that our colored troops are being treated badly abroad, but, of course, the rumors are false. Here is another of our reports:

> It is reported that the negroes of this city are considerably worked up over the recent killing of W. F. and a negro named B., and that one or more negro preachers asked on H., on the occasion of his recent address in behalf of the Red Cross, how much longer they would have to stand such treatment, declaring that they were shot down in cold blood, like dogs.

These are simply a few of the hundreds of reports that come in to us. Here is an article published in a negro magazine. The article is extremely bitter, but it expresses the feeling, apparently, of a great many colored people about lynchings. Do you want me to read that?

Mr. IGOE. You may proceed.

Maj. SPINGARN. The point which this article wishes to make is that, whereas the 13 negroes who participated in the Houston riot were immediately executed, thousands of the black race have been lynched and few, if any, white men have paid the penalty for it by death. I am not trying to justify the statement, but I am quoting it to explain their reason or basis for the bitter feeling of the article. The article in the colored paper is entitled "Thirteen," and reads as follows:

> They have gone to their deaths. Thirteen young, strong men; soldiers who have fought for a country which was never wholly theirs; men born to suffer ridicule, injustice, and at last death itself. They broke the law. Against their punishment, if it was legal, we can not protest. But we can protest and we do protest against the shameful treatment which these men and which we, their brothers, received and our children await; and, above all, we raise our clenched hands against the hundreds of thousands of white murderers and scoundrels who have oppressed, killed, ruined, robbed, and debased their black fellow men and fellow women, and yet to-day walk scot-free, unwhipped of justice, uncondemned by millions of their white fellow citizens, and unrebuked by the President of the United States.

We have a great many articles following that general tone. Now, it is easy to suppress magazines of that sort, but that is not getting at the cause, and it would be much easier to get at the cause by enacting a statute against lynching and enforcing it. That is the reason we are interested in it. We are interested in preserving the morale of the colored people in the prosecution of the war.

Mr. VOLSTEAD. Is there any State that does not have a law against lynching? Of course, every State in the Union has a law against lynching, and I suppose the penalties are just as severe as those proposed here. Still, at the same time, I suppose it is the belief that they could be reached better by having the Federal Government go after them.

Maj. SPINGARN. We think so.

Mr. VOLSTEAD. Have you some such provision in your bill as Mr. Dyer has, making the community liable?

Maj. SPINGARN. We have no desire to take a stand as to the method by which this should be done. What we wish to call to the

attention of the commimttee is the military necessity of some sort of antilynching measure.

Mr. MORGAN. Is it your theory that lynching is what develops the disaffection or dissatisfaction you have referred to among the colored people?

Maj. SPINGARN. Here is one of our reports on a colored magazine:

There are articles therein which tend to incite the Negro race in this section against the white people, and the magazine is made up mostly of articles on lynching negroes in the South. This magazine is distributed freely by the colored Y. M. C. A. at Camp ———.

Mr. IGOE. I suppose you take steps to suppress literature that is being circulated in the Army that has the effect of causing dissension in the ranks. I suppose you take some steps to eliminate any such thing as that.

Maj. SPINGARN. It is a part of the work of the military intelligence branch to suppress seditious literature, or literature that destroys the morale of our soldiers or civilian population.

Mr. IGOE. Let me ask you this question: Have you considered the other side of this question, and that is the possible resentment on the part of States against a law which might interfere with the jurisdiction of the State courts in the prosecution of crimes?

Maj. SPINGARN. Well, sir, in answer to that I should say, first, that it was to avoid any semblance of such action or any semblance of the idea that it was directed against any section or State that the bill was drafted under the war powers and not under the fourteenth amendment.

Mr. IGOE. I understand what you tried to do, but I was just wondering whether the officers gave any consideration to the effect of an act of this kind upon public sentiment.

Maj. SPINGARN. In the second place, lynching is not by any means a sectional matter. Lynchings have occurred in the North as well as in the South. There have been lynchings in the States of Pennsylvania, Illinois, Indiana, and in various other Northern States.

Capt. HORNBLOWER. May I ask leave to prepare a brief on the bill modified as suggested by the gentleman who sat over here? I think that such a modification would meet with the approval of Maj. Spingarn.

Mr. GARD. What modification was it?

Capt. HORNBLOWER. As modified the bill, after the clause relating to any person held under arrest by or as a prisoner of or in internment by the United States, etc., would read as follows:

or the dependent wife, brother, sister, father, mother, son, daughter, nephew, or niece, whether of the whole blood or half blood, of any person in the military or naval forces of the United States or liable to service therein, as aforesaid, shall be deemed guilty of a capital offense—

etc., omitting, in other words, those relatives of the persons in the service who might be regarded as outside of the scope of the protection of the Federal Government. If you gentlemen approve, I will confine my brief to a discussion of such a bill as that, because what we are after, as has been stated by Maj. Spingarn, from whom I take my orders in this matter, is to be able to say to a very large class or a large number of fellow citizens who are being called into the service of the United States, and who now feel that they do not get the protection of the United States in matters of life or death to the people that they are related to—as I said, we want to be able to say to them that "when Uncle Sam takes you away from your home and sends you away to fight, Uncle Sam will protect you." That is what I said to Maj. Spingarn when he asked me to draw this bill. Of course, he knows the situation, and my connection with it has simply been to make suggestions. My orders were simply to draw a bill accomplishing this purpose.

But, as I have said, the major purpose of this, or the necessity for it, arises from this existing fact, that a great class or number of ignorant persons, easily reached by a lying propaganda instigated by secret enemy agents, are getting into a mood where they say, "While I am fighting in France, you may grab my brother and hang him to a tree, and if I ask the United States Government to do something about it the Government will not take any interest in it, but will say that it is a matter for the States."

Mr. IGOE. Do you think that we could go beyond those who are in the service or are liable to service in the Army?

Capt. HORNBLOWER. I think so, in the same way that you are providing in the war-risk insurance act for the families of the men you have called into the service.

Mr. IGOE. But in doing that under the war-risk insurance act we are not interfering with the States, or taking any jurisdiction away from them. We have the right, of course, to provide for the men in the military service and their dependents out of the Treasury of the United States. There is no question about that.

Capt. HORNBLOWER. But it grows out of the war powers of Congress. The only power expressly granted you by the Constitution to do that is under the war power.

Mr. IGOE. There is a great distinction there between paying money out of the Treasury of the United States to certain classes of people and this case where we would be invading the jurisdiction of the States themselves.

Capt. HORNBLOWER. You gentlemen felt that it was constitutional to provide that the Federal Government should punish a man in a State who would turn to somebody on the street corner and say, "Don't you go in and register for military service; don't do it; it is a bad thing to do." You punish such a man under the Federal law.

Mr. IGOE. That would be for interfering with the registration of soldiers or recruiting the Army.

Capt. HORNBLOWER. Maj. Spingarn is here to testify that the situation which now exists may interfere with the recruiting of enlisted men for the service of the United States, and may seriously interfere with the morale of a large body of people from whom soldiers will be drawn. The situation is that when a riotous assemblage injures one of their near relatives the Federal Government will not do anything about it. It may be an unreasonable feeling on their part, but the point is, as Maj. Spingarn has indicated, that feeling exists.

The CHAIRMAN. Where do you find that this feeling most generally obtains?

Capt. HORNBLOWER. Maj. Spingarn can best answer that, Mr. Chairman.

Maj. SPINGARN. That feeling exists all over the country. I should say that it was as strong in the North as it is in the South.

The CHAIRMAN. I think so, undoubtedly. I live in the South, and our colored people down there are anxious to get into the Army.

Maj. SPINGARN. That feeling exists everywhere, in the North as well as in the South. One reason is that the colored people at the North have developed an "Intelligenzia" which gives expression to their reasoning or ideas. They express themselves in print to a greater degree than they do in the South, but we have reports indicating that that condition exists everywhere. In fact, the report as to the demoralization of colored maids in a certain locality was from the North. On the other hand, the reports about the difference between the treatment accorded colored soldiers and colored civilians is from the South. That was from a colored newspaper in the South.

The CHAIRMAN. From what part of the South?

Maj. SPINGARN. Well, this particular one is neither from the South nor the North. It is from Missouri.

Mr. GARD. That might be characterized as "no man's land."

Maj. SPINGARN. This is from a colored newspaper:

> While a negro man and his wife and two other negroes was being lynched without trial by a jury, and another negro was being lynched by a mob in Georgia as if he were a wild beast, Pvts. Henry Johnson and Needham Roberts were giving their lifeblood in order that the members of the dastardly mob might be spared the curse of autocracy.

That is a common argument in these colored newspapers—that is, that while they are fighting abroad, their relatives and dependents are being injured and lynched here.

Capt. HORNBLOWER. It seems to me that there is a good deal of justice in some of the complaints that these people make. They say, "Uncle Sam has taken us from our homes, and Uncle Sam says we must go to France, but when a lawless mob strings us up to a tree or sets fire to our houses, Uncle Sam says it is none of my business. I do not know anything about it and I have not anything to do with it." We simply want to be able, in time of war, to say to these men who are going to fight in the war that Uncle Sam is going to look out for their dependents.

The CHAIRMAN. But you must not forget that there would not be any Uncle Sam if it were not for the 48 sovereign States.

Capt. HORNBLOWER. That is true, of course.

The CHAIRMAN. That is what makes Uncle Sam. When you take jurisdiction away from those sovereign States you destroy Uncle Sam. I am in sympathy with anything that will counteract the propaganda you speak of, but the constitutional question is a very serious one, and I hope you will devote your argument to the question as to whether we have the right to make it a crime against the Federal Government for somebody to kill the kinsman of a Federal soldier inside of a State and away from a military reservation.

Capt. HORNBLOWER. I understand that I am to prepare a brief on that point, but as to how widespread this disaffection is I am unable to state, because I have not made a study of it. I have simply drafted a bill to accomplish the purpose that the major speaks of.

The CHAIRMAN. We are very much obliged to you gentlemen for your attendance and testimony this morning.

(Thereupon the committee adjourned.)

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ANTILYNCHING AND PROTECTION OF CIVIL RIGHTS

HEARINGS

BEFORE

SUBCOMMITTEE NO. 3 OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

EIGHTY-FIRST CONGRESS

FIRST AND SECOND SESSIONS

ON

H. R. 115, H. R. 155, H. R. 365, H. R. 385, H. R. 443, H. R. 788, H. R. 795, H. R. 1351, and H. R. 4683

FOR THE BETTER ASSURANCE OF THE PROTECTION OF CITIZENS OF THE UNITED STATES AND OTHER PERSONS WITHIN THE SEVERAL STATES FROM MOB VIOLENCE AND LYNCHING, AND FOR OTHER PURPOSES

H. R. 2182 and H. R. 3553

TO PERMIT THE PROSECUTION OF LYNCHING IN FEDERAL COURTS WHEN THE GOVERNOR OR ATTORNEY GENERAL OF THE STATE CONCERNED LACKS AUTHORITY TO DIRECT THE PROSECUTION IN STATE COURTS, OR SUCH PROSECUTION IS IMPAIRED BY HIS REFUSAL TO DO SO

H. R. 4682

TO PROVIDE MEANS OF FURTHER SECURING AND PROTECTING THE CIVIL RIGHTS OF PERSONS WITHIN THE JURISDICTION OF THE UNITED STATES

JUNE 8, 15, 22, AND 29, 1949; JANUARY 17 AND 24, 1950

Serial No. 18

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ANTILYNCHING AND PROTECTION OF CIVIL RIGHTS

WEDNESDAY, JUNE 8, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE OF THE JUDICIARY,
SUBCOMMITTEE No. 3,
Washington, D. C.

The subcommittee met, pursuant to notice, at 10 a. m. in room 346, Old House Office Building, Hon. William F. Byrne, chairman, presiding.

Mr. BYRNE. Gentlemen, we are met this morning to consider H. R. 4682 and various related bills pertaining to civil rights.

(The bills referred to are as follows:)

[H. R. 115, 81st Cong., 1st sess]

A BILL For the better assurance of the protection of citizens of the United States and other persons within the several States from mob violence and lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act are enacted in exercise of the power of Congress to enforce, by appropriate legislation, the provisions of the fourteenth amendment to the Constitution of the United States and for the purpose of better assuring by the several States under said amendment equal protection and due process of law to all persons charged with or suspected or convicted of any offense within their jurisdiction.

DEFINITIONS

SEC. 2. Any assemblage of two or more persons which shall, without authority of law, (a) commit or attempt to commit violence upon the person of any citizen or citizens of the United States because of his or their race, creed, color, national origin, ancestry, language, or religion, or (b) exercise or attempt to exercise, by physical violence against the person, any power of correction of punishment over any citizen or citizens of the United States or other person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such citizen or citizens, person or persons, or of imposing a punishment not authorized by law, shall constitute a lynch mob within the meaning of this Act. Any such violence by a lynch mob shall constitute lynching within the meaning of this Act.

PUNISHING FOR LYNCHING

SEC. 3. Any person whether or not a member of a lynch mob who willfully instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, and any member of a lynch mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $10,000 or by imprisonment not exceeding twenty years, or by both such fine and imprisonment

PUNISHMENT FOR FAILURE TO PREVENT LYNCHING

SEC. 4. Whenever a lynching shall occur, any officer or employee of a State or any governmental subdivision thereof, who shall have been charged with the duty or shall have possessed the authority as such officer or employee to

prevent the lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to prevent the lynching, and any officer or employee of a State or governmental subdivision thereof who shall have had custody of the person or persons lynched and shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

SEC. 5. Whenever a lynching of any person or persons shall occur, and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching, or who shall have had custody of the person or persons lynched, has neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching or that any officer or employee of a State or governmental subdivision thereof, in violation of his duty as such officer or employee, has neglected, refused, or willfully failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, the Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violation of this Act.

COMPENSATION FOR VICTIMS OF LYNCHING

SEC. 6. (1) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction. Every such governmental subdivision shall also be responsible for any lynching which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction, irrespective of whether such lynching occurs within its territorial jurisdiction or not. Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each individual who suffers injury to his or her person, or to his or her next of kin if such injury results in death, for a sum of not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided, however*, That the governmental subdivision may prove by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and citizens thereof, when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further*, That the satisfaction of judgment against one governmental subdivision responsible for a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching.

(2) Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part. Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such governmental subdivision. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(3) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district as he may designate in such order: *Provided*, That no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

SEC. 7. The crime defined in and punishable under the Act of June 22, 1932 (47 Stat 326), as amended by the Act of May 18, 1934 (48 Stat. 781), shall include the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, correction, or intimidation.

SEPARABILITY CLAUSE

SEC. 8. If any particular provision, sentence, or clause, or provisions, sentences, or clauses, of this Act, or the application thereof to any particular person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SHORT TITLE

SEC. 9. This Act may be cited as the "Federal Anti-Lynching Act".

[H R 155, 81st Cong , 1st sess]

A BILL For the better assurance of the protection of citizens of the United States and other persons within the several States from mob violence and lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act are enacted in exercise of the power of Congress to enforce, by appropriate legislation, the provisions of the fourteenth amendment to the Constitution of the United States and for the purpose of better assuring by the several States under said amendment equal protection and due process of law to all persons charged with or suspected or convicted of any offense within their jurisdiction.

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officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

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(2) Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part. Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or, if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such governmental subdivision. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(3) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district as he may designate in such order: *Provided*, That no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

SEC. 7. The crime defined in and punishable under the Act of June 22, 1932 (47 Stat. 326), as amended by the Act of May 18, 1934 (48 Stat. 781), shall include the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, correction, or intimidation.

SEPARABILITY CLAUSE

SEC. 8. If any particular provision, sentence, or clause, or provisions, sentences, or clauses, of this Act, or the application thereof to any particular person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SHORT TITLE

SEC. 9. This Act may be cited as the "Federal Anti-Lynching Act".

[H. R. 365, 81st Cong., 1st sess.]

A BILL For the better assurance of the protection of persons within the several States from mob violence and lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act are enacted in exercise of the power of Congress to enforce, by appropriate legislation, the provisions of the fourteenth amendment of the Constitution of the United States and for the purpose of better assuring under said amendment protection to the lives and persons of citizens of the United States and equal protection of the laws and due process of law to all persons within the jurisdiction of the several States. A State shall be deemed to have denied to any victim or victims of lynching equal protection of the laws and due process of law whenever that State or any legally competent governmental subdivision thereof shall have failed, neglected, or refused to employ the lawful means at its disposal for the protection of that person or those persons against lynching or against seizure and abduction followed by lynching.

SEC. 2. Any assemblage of three or more persons which shall exercise or attempt to exercise by physical violence and without authority of law any power of correction or punishment over any citizen or citizens of the United States or other person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such citizen or citizens, person or persons, shall constitute a "mob" within the meaning of this Act. Any such violence by a mob which causes the death or serious bodily injury of the victim or victims thereof shall constitute "lynching" within the meaning of this Act: *Provided, however*, That "lynching" shall not be deemed to include violence occurring between members of groups of lawbreakers such as are commonly designated as gangsters or racketeers, nor violence occurring during the course of picketing or boycotting incidental to any "labor dispute" as that term is defined and used in the Act of March 23, 1932 (47 Stat. 70).

SEC. 3. Whenever a lynching of any person or persons shall occur, any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who shall have had custody of the person or persons lynched and shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

SEC. 4. Whenever a lynching of any person or persons shall occur, and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching, or who shall have had custody of the person or persons lynched, has neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching or that any officer or employee of a State or governmental subdivision thereof, in violation of his duty as such officer or employee, has neglected, refused, or willfully failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, the Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violation of this Act.

SEC. 5. (1) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction Every such governmental subdivision shall also be responsible for any lynching occurring outside of its territorial jurisdiction, whether within or without the same State, which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction. Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each person injured, or to his or her next of kin if such injury results in death, for a sum not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided, however*, That the governmental subdivision may prove by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and the citizens thereof when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further*, That the satisfaction of judgment against one governmental subdivision responsible for a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching.

(2) Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or, if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such a governmental subdivision. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(3) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district as he may designate in such order: *Provided*, That no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

SEC. 6. The crime defined in and punishable under the Act of June 22, 1932 (47 Stat. 326), as amended by the Act of May 18, 1934 (48 Stat. 781), shall include the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, correction, or intimidation.

SEC. 7. The essential purpose of this Act being the furtherance of protection of the lives and persons of citizens of the United States and other persons against unlawful and violent interference with or prevention of the orderly processes of justice, and against possible dereliction of duty in this respect by States, or any governmental subdivision thereof, or any officer or employee of either a

State or governmental subdivision thereof, if any particular provision, sentence, or clause, or provisions, sentences, or clauses, of this Act or the application thereof to any particular person or circumstances, is held invalid, the remainder of this Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

[H. R. 385, 81st Cong., 1st sess]

A BILL For the better assurance of the protection of persons within the several States from mob violence and lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act are enacted in exercise of the power of Congress to enforce, by appropriate legislation, the provisions of the fourteenth amendment of the Constitution of the United States and for the purpose of better assuring under said amendment protection to the lives and persons of citizens of the United States and equal protection of the laws and due process of law to all persons within the jurisdiction of the several States. A State shall be deemed to have denied to any victim or victims of lynching equal protection of the laws and due process of law whenever that State or any legally competent governmental subdivision thereof shall have failed, neglected, or refused to employ the lawful means at its disposal for the protection of that person or those persons against lynching or against seizure and abduction followed by lynching.

SEC. 2 Any assemblage of three or more persons which shall exercise or attempt to exercise by physical violence and without authority of law any power of correction or punishment over any citizen or citizens of the United States or other person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such citizen or citizens, person or persons, shall constitute a "mob" within the meaning of this Act. Any such violence by a mob which causes the death or serious bodily injury of the victim or victims thereof shall constitute "lynching" within the meaning of this Act: *Provided, however*, That "lynching" shall not be deemed to include violence occurring between members of groups of lawbreakers such as are commonly designated as gangsters or racketeers, nor violence occurring during the course of picketing or boycotting incidental to any "labor dispute" as that term is defined and used in the Act of March 23, 1932 (47 Stat 70).

SEC. 3. Whenever a lynching of any person or persons shall occur, any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to protect such persons or persons from lynching, and any officer or employee of a State or governmental subdivision thereof, who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

SEC. 4. Whenever a lynching of any person or persons shall occur, and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching, or who shall have had custody of the person or persons lynched, has neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching or that any officer or employee of a State or governmental subdivision thereof, in violation of his duty as such officer or employee, has neglected, refused, or willfully failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, the Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violation of this Act.

SEC. 5. (1) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction. Every such governmental subdivi-

sion shall also be responsible for any lynching occurring outside of its territorial jurisdiction, whether within or without the same State, which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction. Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each person injured, or to his or her next of kin if such injury results in death, for a sum of not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided, however*, That the governmental subdivision may prove by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and the citizens thereof when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further*, That the satisfaction of judgment against one governmental subdivision which may also be responsible for that lynching.

(2) Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part. Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or of the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such a governmental subdivision. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the qudgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(3) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district as he may designate in such order: *Provided*, That no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

SEC. 6. The crime defined in and punishable under the Act of June 22, 1932 (47 Stat. 326), as amended by the Act of May 18, 1934 (48 Stat. 781), shall include the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, correction, or intimidation.

SEC. 7. The essential purpose of this Act being the furtherance of protection of the lives and persons of citizens of the United States and other persons against unlawful and violent interference with or prevention of the orderly processes of justice, and against possible dereliction of duty in this respect by States, or any governmental subdivision thereof, or any officer or employee of either a State or governmental subdivision thereof, if any particular provision, sentence, or clause, or provisions, sentences, or clauses, of this Act or the application thereof to any particular person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

[H. R. 443, 81st Cong., 1st sess.]

A BILL To provide for the application and enforcement of provisions of the fourteenth amendment to the Constitution of the United States and article 55 of the Charter of the United Nations and to assure the protection of citizens of the United States and other persons within the several States from mob violence and lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The Congress hereby makes the following findings:

(a) The duty of each State to refrain from depriving any person of life, liberty, or property without due process of law, and from denying to any person

within its jurisdiction the equal protection of the laws, imposes on all States the obligation to exercise their police powers in a manner which will protect all persons equally without discrimination because of race, creed, color, national origin, ancestry, language, or religion. A State deprives a person of life, liberty, or property without due process of law and denies him the equal protection of the laws when the State's inaction has the effect of a discriminatory withholding of protection.

When a State, by the malfeasance or nonfeasance of its officials, permits persons not expressly designated as its agents to punish any person within its jurisdiction for crimes or alleged crimes, without trial or other due process of law, and condones such conduct by participating in or facilitating such conduct or by failing to punish either those of its officials who permit such conduct or those guilty of the conduct, the State effectively deprives the victims of such conduct of life, liberty, or property without due process of law and denies to them the equal protection of the laws.

Lynching constitutes an organized effort not only to punish the persons lynched but also to terrorize the groups, in the community or elsewhere, of which the persons lynched are members by reason of their race, creed, color, national origin, ancestry, language, or religion, and thus to deny to all members of such groups, and to prevent them from exercising the rights guaranteed to them by the Constitution and laws of the United States. By condoning lynching, the State makes the lynching, punishment without due process of law, or other denial of the equal protection of the laws its own act and gives the color and authority of State law to the acts of those guilty of the lynching, punishment, or other denial.

(b) When persons within a State are deprived by a State or by individuals within a State, with or without condonation by a State or its officials, of equal protection of the laws because of race, color, creed, national origin, ancestry, language, or religion, they are denied, or limited in the exercise of, human rights and fundamental freedoms.

(c) Notwithstanding the provisions of the fourteenth amendment to the Constitution of the United States citizens of the United States and other persons have been denied the equal protection of the laws by reason of mob violence.

(d) This mob violence is in many instances the result of acts of omission on the part of State and local officials.

(e) These omissions on the part of State and local officials are not only contrary to the fourteenth amendment, but also to the law of nations, which requires that every person be secure against violence to himself or his property by reason of his race, creed, color, national origin, ancestry, language, or religion and specifically contrary to article 55 of the Charter of the United Nations which pledges the United States to promote universal respect for, and observance of, human rights and fundamental freedoms.

SEC. 2. The Congress finds that the succeeding provisions of this Act are necessary in order to accomplish the following purposes:

(a) To enforce the provisions of article XIV, section 1, of the amendments to the Constitution of the United States.

(b) To promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, language, or religion, in accordance with the treaty obligations assumed by the United States under article 55 and article 56 of the United Nations Charter.

(c) To define and punish offenses against the law of nations.

RIGHT TO BE FREE OF LYNCHING AND LYNCH-MOB VIOLENCE

SEC. 3. It is hereby declared that the right to be free from lynching and lynch-mob violence is a right of citizens of the United States, accruing to them by virtue of such citizenship. Such right is in addition to any similar rights they may have as citizens of any of the several States or as persons within their jurisdiction.

DEFINITIONS

SEC. 4. As used in this Act—

(a) The term "lynch mob" means any assemblage of two or more persons which shall, without authority of law, (1) commit or attempt to commit an act or acts of violence upon the person or property of any citizen or citizens of the United States or other person or persons, (2) exercise or attempt to exercise, by physical violence against person or property, any power of correction or punish-

ment over any citizen or citizens of the United States or other person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such citizen or citizens, person or persons, or of imposing a punishment not authorized by law.

(b) The term "lynching" means any act or acts of violence by a lynch mob.

PUNISHMENT FOR LYNCHING

SEC. 5. Any person, whether or not a member of a lynch mob, who willfully instigates, incites, organizes, aids, or abets such a mob committing an act of violence shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $10,000 or by imprisonment not exceeding twenty years, or by both such fine and imprisonment.

PUNISHMENT FOR FAILURE TO PREVENT LYNCHING OR APPREHEND OFFENDERS

SEC. 6. Any officer or employee of a State or any governmental subdivision thereof, who, having the authority for or being charged with the duty of protecting a citizen of the United States or other person, shall neglect, refuse, or willfully fail to make all diligent efforts to protect such citizen or person against acts of violence or lynching, and any officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of a lynch mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

SEC. 7. Whenever a lynching shall occur, and an information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who, having the duty and possessing the authority to protect a person or persons from lynching, has neglected, refused, or willfully failed to make all diligent efforts to prevent such lynching or has neglected, refused, or willfully failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of a lynch mob, the Attorney General of the United States shall cause an investigation to be made to determine whether or not there has been a violation of this Act.

COMPENSATION FOR VICTIMS OF LYNCHING

SEC. 8. (1) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction. Every such governmental subdivision shall also be responsible for any lynching which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction, irrespective of whether such lynching occurs within its territorial jurisdiction or not. Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each individual who suffers injury to his or her person or property, or to his or her next of kin if such injury results in death, for a sum of not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided, however,* That the governmental subdivision may prove by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and the citizens thereof, when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further,* That the satisfaction of judgment against one governmental subdivision responsible for a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching.

Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part. Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or, if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such governmental subdivision or, upon proper certification by the Attorney General, the amount of any such judgment shall be paid out of the unappropriated funds in the Treasury of the United States and shall be deducted from any funds otherwise available for payment to the State, wherein the violation occurred, under any grant-in-aid program. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of interstate distribution in the State of domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(3) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district which he may designate in such order: *Provided,* That no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

SEC. 9. The crime defined in and punishable under the Act of June 22, 1932 (47 Stat. 326), as amended by the Act of May 18, 1934 (48 Stat. 781, ch. 301), shall include the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, correction, or intimidation.

SEVERABILITY CLAUSE

SEC. 10. The essential purposes of this Act being the safeguarding of rights of citizens of the United States and the furtherance of protection of the lives, persons, and property of such citizens and other persons against unlawful and violent interference with or prevention of the orderly processes of justice, and against possible dereliction of duty in this respect by States, or any governmental subdivision thereof, or any officer or employee of either a State or governmental subdivision thereof, if any particular provision, sentence, or clause, or provisions, sentences, or clauses of this Act or the application thereof to any particular person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or other circumstances, shall not be affected thereby.

SHORT TITLE

SEC. 11. This Act may be cited as the "Federal Antilynching Act".

[H. R. 788, 81st Cong., 1st sess.]

A BILL For the better assurance of the protection of persons within the several States from mob violence and lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act are enacted in exercise of the power of Congress to enforce, by appropriate legislation, the provisions of the fourteenth amendment of the Constitution of the United States and for the purpose of better assuring under said amendment protection to the lives and persons of citizens of the United States and equal protection of the laws and due process of law to all persons within the jurisdiction of the several States. A State shall be deemed to have denied to any victim or victims of lynching equal protection of the laws and due process of law whenever that State or any legally competent governmental subdivision thereof shall have failed, neglected, or refused to employ the lawful means at its disposal for the protection of that person or those persons against lynching or against seizure and abduction followed by lynching.

SEC. 2. Any assemblage of three or more persons which shall exercise or attempt to exercise by physical violence and without authority of law any power of correction or punishment over any citizen or citizens of the United States or other

person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such citizen or citizens, person or persons, shall constitute a "mob" within the meaning of this Act. Any such violence by a mob which causes the death or serious bodily injury of the victim or victims thereof shall constitute "lynching" within the meaning of this Act: *Provided, however*, That "lynching" shall not be deemed to include violence occurring between members of groups of lawbreakers such as are commonly designated as gangsters or racketeers, nor violence occurring during the course of picketing or boycotting incidental to any labor dispute as that term is defined and used in the Act of March 23, 1932 (47 Stat. 70).

SEC. 3. Whenever a lynching of any person or persons shall occur, any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fined and imprisonment.

SEC. 4. Whenever a lynching of any person or persons shall occur, and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching, or who shall have had custody of the person or persons lynched, has neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching or that any officer or employee of a State or governmental subdivision thereof, in violation of his duty as such officer or employee, has neglected, refused, or willfully failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, the Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violations of this Act.

SEC. 5 (1) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction Every such governmental subdivision shall also be responsible for any lynching occurring outside of its territorial jurisdiction, whether within or without the same State, which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each person injured, or to his or her next of kin if such injury results in death, for a sum not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided, however*, That the governmental subdivision may prove by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and the citizens thereof when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further*, That the satisfaction of judgment against one governmental subdivision shall preclude recovery against any other such governmental subdivision which may also be responsible for that lynching.

(2) Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part. Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or of the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such a governmental subdivision. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty

of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(3) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district as he may designate in such order: *Provided*, That no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

SEC. 6. The crime defined in and punishable under the Act of June 22, 1932 (47 Stat. 326), as amended by the Act of May 18, 1934 (48 Stat. 781), shall include the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, correction, or intimidation.

SEC. 7. The essential purpose of this Act being the furtherance of protection of the lives and persons of citizens of the United States and other persons against unlawful and violent interference with or prevention of the orderly processes of justice, and against possible dereliction of duty in this respect by States, or any governmental subdivision thereof, or any officer or employee of either a State or governmental subdivision thereof, if any particular provision, sentence, or clause, or provisions, sentences, or clauses, of this Act or the application thereof to any particular person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

[H. R. 795, 81st Cong., 1st sess.]

A BILL To declare certain rights of citizens of the United States, and for the better assurance of the protection of such citizens and other persons within the several States from mob violence and lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The Congress hereby makes the following findings:

(a) The duty of each State to refrain from depriving any person of life, liberty, or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws, imposes on all States the obligation to exercise their police powers in a manner which will protect all persons equally without discrimination because of race, creed, color, national origin, ancestry, language, or religion. A State deprives a person of life, liberty, or property without due process of law and denies him the equal protection of the laws when the State's inaction has the effect of a discriminatory withholding of protection.

When a State, by the malfeasance or nonfeasance of its officials, permits persons not expressly designated as its agents to punish any person within its jurisdiction for crimes or alleged crimes, without trial or other due process of law, and condones such conduct by participating in or facilitating such conduct or by failing to punish either those of its officials who permit such conduct or those guilty of the conduct, the State effectively deprives the victims of such conduct of life, liberty, or property without due process of law and denies to them the equal protection of the laws.

Lynching constitutes an organized effort not only to punish the persons lynched but also to terrorize the groups, in the community or elsewhere, of which the persons lynched are members by reason of their race, creed, color, national origin, ancestry, language, or religion, and thus to deny to all members of such groups, and to prevent them from exercising, the rights guaranteed to them by the Constitution and laws of the United States. By condoning lynching, the State makes the lynching, punishment without due process of law, or other denial of the equal protection of the laws its own act and gives the color and authority of State law to the acts of those guilty of the lynching, punishment, or other denial.

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(b) When persons within a State are deprived by a State or by individuals within a State, with or without condonation by a State, or its officials, of equal protection of the laws because of race, color, creed, national origin, ancestry, language, or religion, they are denied, or limited in the exercise of, human rights and fundamental freedoms.

(c) The law of nations requires that every person be secure against violence to himself or his property by reason of his race, creed, color, national origin, ancestry, language, or religion.

SEC. 2 The Congress finds that the succeeding provisions of this Act are necessary in order to accomplish the following purposes:

(a) To enforce the provisions of article XIV, section 1, of the amendments to the Constitution of the United States;

(b) To promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, language, or religion, in accordance with the treaty obligations assumed by the United States under article 55 and article 56 of the United Nations Charter; and

(c) To define and punish offenses against the law of nations.

RIGHT TO BE FREE OF LYNCHING

SEC. 3 It is hereby declared that the right to be free from lynching is a right of citizens of the United States, accruing to them by virtue of such citizenship. Such right is in addition to any similar rights they may have as citizens of any of the several States or as persons within their jurisdiction.

DEFINITIONS

SEC 4. Any assemblage of two or more persons which shall, without authority of law, (a) commit or attempt to commit violence upon any person or persons or on his or their property because of his or their race, creed, color, national origin, ancestry, language, or religion, or (b) exercise or attempt to exercise, by physical violence against person or property, any power of correction or punishment over any citizen or citizens of the United States or other person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such citizen or citizens, person or persons, or of imposing a punishment not authorized by law, shall constitute a lynch mob within the meaning of this Act. Any such violence by a lynch mob shall constitute lynching within the meaning of this Act.

PUNISHMENT FOR LYNCHING

SEC. 5. Any person whether or not a member of a lynch mob who willfully instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, and any member of a lynch mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $10,000 or by imprisonment not exceeding twenty years, or by both such fine and imprisonment.

PUNISHMENT FOR FAILURE TO PREVENT LYNCHING

SEC. 6. Whenever a lynching shall occur, any officer or employee of a State or any governmental subdivision thereof, who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent the lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to prevent the lynching, and any officer or employee of a State or governmental subdivision thereof who shall have had custody of the person or persons lynched and shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

SEC. 7 Whenever a lynching of any person or persons shall occur, and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching, or who shall have had custody of the person or persons lynched, has neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching or that any officer or employee of a State or governmental subdivision thereof, in violation of his duty as such officer or employee, has neglected, refused, or willfully failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, the Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violation of this Act.

COMPENSATION FOR VICTIMS OF LYNCHING

SEC. 8. (1) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction. Every such governmental subdivision shall also be responsible for any lynching which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction, irrespective of whether such lynching occurs within its territorial jurisdiction or not. Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each individual who suffers injury to his or her person or property, or to his or her next of kin if such injury results in death, for a sum of not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided, however*, That the governmental subdivision may probe by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and the citizens thereof, when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further*, That the satisfaction of judgment against one governmental subdivision responsible for a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching by the individual who has obtained satisfaction of his judgment.

(2) Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part. Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or, if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such governmental subdivision. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(3) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district as he may designate in such order: *Provided*, That no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

SEC 9. The crime defined in and punishable under the Act of June 22, 1932 (47 Stat. 326), as amended by the Act of May 18, 1934 (48 Stat. 781), shall include the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, correction, or intimidation.

SEVERABILITY CLAUSE

SEC. 10. The essential purposes of this Act being the safeguarding of rights of citizens of the United States and the furtherance of protection of the lives, persons, and property of such citizens and other persons against unlawful and violent interference with or prevention of the orderly processes of justice, and against possible dereliction of duty in this respect by States, or any governmental subdivision thereof, or any officer or employee of either a State or governmental subdivision thereof, if any particular provision, sentence, or clause, or provisions, sentences, or clauses, of this Act or the application thereof to any particular person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or other circumstances, shall not be affected thereby.

SHORT TITLE

SEC. 11. This Act may be cited as the "Federal Anti-Lynching Act."

[H R 1351, 81st Cong , 1st sess]

A BILL For the better assurance of the protection of citizens of the United States and other persons within the several States from mob violence and lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act are enacted in exercise of the power of Congress to enforce, by appropirate legislation, the provisions of the fourteenth amendment to the Constitution of the United States and for the purpose of better assuring by the several States under said amendment equal protection and due process of law to all persons charged with or suspected of any offense within their jurisdiction.

DEFINITION

SEC. 2. Any assemblage of two or more persons which shall, without authority of law, (a) comit or attempt to commit violence upon the person of any citizen or citizens of the United States because of his or their race, creed, color, national origin, ancestry, language, or religion, or (b) exercise or attempt to exercise, by physical violence against the person, any power of correction or punishment over any citizen or citizens of the United States or other person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such citizen or citizens, person or persons, or of imposing a punishment not authorized by law, shall constitute a lynch mob within the meaning of this Act Any such violence by a lynch mob, shall constitute lynching within the meaning of this Act.

PUNISHMENT FOR LYNCHING

SEC. 3. Any person whether or not a member of a lynch mob who willfully instigates, incites, organizes, aids abets, or commits a lynching by any means whatsoever, and any member of a lynch mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $10,000 or by imprisonment not exceeding twenty years, or by both such fine and imprisonment.

PUNISHMENT FOR FAILURE TO PREVENT LYNCHING

SEC. 4. Whenever a lynching shall occur, any officer or employee of a State or any governmental subdivision thereof, who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent the lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to prevent the lynching, and any officer or employee of a State or governmental subdivision thereof who shall have had custody of the person or persons lynched and shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend, keep in custody, or prosecute the members

or any member of the lynching mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

SEC. 5. Whenever a lynching of any person or persons shall occur, and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching, or who shall have had custody of the person or persons lynched, has neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching or that any officer or employee of a State or governmental subdivision thereof, in violation of his duty as such officer or employee, has neglected, refused, or willfully failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, the Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violation of this Act.

COMPENSATION FOR VICTIMS OF LYNCHING

SEC. 6. (1) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction. Every such governmental subdivision shall also be responsible for any lynching which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction, irrespective of whether such lynching occurs within its territorial jurisdiction or not. Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each individual who suffers injury to his or her person, or to his or her next of kin if such injury results in death, for a sum of not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided, however*, That the governmental subdivision may prove by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and the citizens thereof, when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further*, That the satisfaction of judgment against one governmental subdivision responsible for a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching.

(2) Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or, if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants, but in any event without prepayment of costs If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such governmental subdivision. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent Any judgment or award under this Act shall be exempt from all claims of creditors

(3) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district as he may designate in such order: *Provided*, That no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

SEC. 7. The crime defined in and punishable under the Act of June 22, 1932 (47 Stat. 326), as amended by the Act of May 18, 1934 (48 Stat. 781), shall in-

clude the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, correction, or intimidation.

SEPARABILITY CLAUSE

SEC. 8. If any particular provision, sentence, or clause, or provisions, sentences, or clauses, of this Act, or the application thereof to any particular person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SHORT TITLE

SEC. 9. This Act may be cited as the "Federal Anti-Lynching Act."

[H. R 4683, 81st Cong , 1st Sess]

A BILL To provide protection of persons from lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Antilynching Act."

SEC. 2. The Congress finds as fact that the succeeding provisions of this Act are necessary—

(a) to insure the more complete and full enjoyment by all persons of the rights, privileges, and immunities secured and protected by the Constitution of the United States, and to enforce the provisions of the Constitution;

(b) to safeguard to the several States and Territories of the United States a republican form of government from the lawless conduct of persons threatening to destroy the several systems of public criminal justice and frustrate the functioning thereof through duly constituted officials;

(c) to promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, language, or religion, in accordance with the undertaking of the United States under the United Nations Charter, and to further the national policy in that regard by securing to all persons under the jurisdiction of the United States effective recognition of certain of the rights and freedoms proclaimed by the General Assembly of the United Nations in the Universal Declaration of Human Rights.

SEC. 3. It is hereby declared that the right to be free from lynching is a right of all persons within the jurisdiction of the United States. Such right is in addition to any similar rights they may have as citizens of any of the several States or as persons within their jurisdiction.

SEC. 4. Any assemblage of two or more persons which shall, without authority of law, (a) commit or attempt to commit violence upon any person or persons or on his or their property because of his or their race, color, religion, or national origin, or (b) exercise or attempt to exercise, by physical violence against person or property, any power of correction or punishment over any person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such person or persons, or of imposing a punishment not authorized by law, shall constitute a lynch mob within the meaning of this Act. Any such violence or attempt by a lynch mob shall constitute lynching within the meaning of this Act.

SEC. 5. Any person whether or not a member of a lynch mob who willfully instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, and any member of a lynch mob, shall, upon conviction, be fined not more than $1,000 or imprisoned not more than one year, or both; or shall be fined not more than $10,000 or imprisoned not more than twenty years, or both, if the wrongful conduct herein results in death or maiming, or damage to property as amounts to an infamous crime under applicable State or Territorial law. An infamous crime, for the purposes of this section, shall be deemed one which under applicable State or Territorial law is punishable by imprisonment for more than one year.

SEC. 6. (a) Whenever a lynching shall occur, any peace officer of a State or any governmental subdivision thereof, who shall have been charged with the duty or shall have possessed the authority as such officer to prevent the acts

constituting the lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to prevent the lynching, and any such officer who shall have had custody of the person or persons lynched and shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any such officer who, in violation of his duty as such officer, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend or keep in custody the members of any member of the lynching mob, shall be guilty of a felony and, upon conviction, shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or both.

(b) Whenever a lynching shall occur in any Territory, possession, District of Columbia, or in any other area in which the United States shall exercise exclusive criminal jurisdiction, any peace officer of the United States or of such Territory, possession, District, or area, who shall have been charged with the duty or shall have possessed the authority as such officer to prevent the acts constituting the lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to prevent the lynching, and any such officer who shall have had custody of the person or persons lynched and shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any such officer who, in violation of his duty as such officer, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend or keep in custody the members or any member of the lynching mob, shall be guilty of a felony and, upon conviction, shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or both.

SEC. 7. For the purposes of this Act, the term "peace officer" shall include those officers, their deputies, and assistants who perform the functions of police personnel, sheriffs, constables, marshals, jailers, or jail wardens, by whatever nomenclature they are designated.

SEC. 8. The crime defined in and punishable under the Act of June 22, 1932, as amended (18 U. S. C. 1201, 1202, 10), shall include knowingly transporting, or causing to be transported, in interstate or foreign commerce, any person unlawfully abducted and held because of his race, color, religion, or national origin, or for purposes of punishment, conviction, or intimidation.

SEC. 9. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

[H. R 2182, 81st Cong., 1st Sess]

A BILL To permit the prosecution of lynching in Federal courts when the governor or attorney general of the State concerned lacks authority to direct the prosecution in State courts, or such prosecution is impaired by his refusal to do so.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 13 (relating to crimes involving civil rights) of title 18 of the United States Code is hereby amended by adding at the end thereof the following new section:

"§ 245. Lynching.

"Whoever willfully instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, or is knowingly a member of a lynch mob, shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

"As used in this section—

"The term 'lynch mob' means any assemblage of or more persons which, without authority of law, commits or attempts to commit violence upon the person of any individual in the custody of a peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of taking the life of such individual.

"The term 'lynching' means any violence by a lynch mob upon the person of any such individual, with the purpose or consequence of taking the life of such individual"

SEC. 2 The table of contents of chapter 13 of title 18 of the United States Code is hereby amended by adding at the end thereof "245. Lynching."

SEC. 3. Section 3231 (relating to jurisdiction of district courts) of title 18 of the United States Code is hereby amended by adding at the end thereof the following new paragraph:

"Notwithstanding any other provision of this title, a district court of the United States shall have jurisdiction of an offense against section 245 of this title

only if the court finds, with respect to each State in which the offense was committed, that—

"(1) the act or acts constituting the offense do not also constitute, under the laws of the State, an offense which may be prosecuted (A) by the attorney general of the State or an attorney acting under his direction or the direction of the governor of the State, and (B) in a local governmental subdivision other than that or those, as the case may be, in which it was committed; or

"(2) the prosecution of the offense against State law has been impaired by the willful failure or refusal of the attorney general of the State or the governor of the State to exercise his authority with respect to such prosecution; and a sufficient time has elapsed since the offense against section 245 was committed to enable State law enforcement officers to begin the prosecution of the offense against State law."

SEC. 4. This Act shall take effect on January 1, 1950.

[H. R. 3553, 81st Cong, 1st Sess.]

A BILL To permit the prosecution of lynching in Federal courts when the governor or attorney general of the State concerned lacks authority to direct the prosecution in State courts, or such prosecution is impaired by his refusal to do so

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 13 (relating to crimes involving civil rights) of title 18 of the United States Code is hereby amended by adding at the end thereof the following new section:

"§ 245. Lynching.

"Whoever willfully instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, or is knowingly a member of a lynch mob, shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

"As used in this section—

"The term 'lynch mob' means any assemblage of or more persons which, without authority of law, commits or attempts to commit violence upon the person of any individual in the custody of a peace officer or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of taking the life of such individual.

"The term 'lynching' means any violence by a lynch mob upon the person of any such individual, with the purpose or consequence of taking the life of such individual."

SEC. 2. The table of contents of chapter 13 of title 18 of the United States Code is hereby amended by adding at the end thereof "245. Lynching."

SEC. 3. Section 3231 (relating to jurisdiction of district courts) of title 18 of the United States Code is hereby amended by adding at the end thereof the following new paragraph:

"Notwithstanding any other provision of this title, a district court of the United States shall have jurisdiction of an offense against section 245 of this title only if the court finds, with respect to each State in which the offense was committed, that—

"(1) the act or acts constituting the offense do not also constitute, under the laws of the State, an offense which may be prosecuted (A) by the attorney general of the State or an attorney acting under his direction or the direction of the governor of the State, and (B) in a local governmental subdivision other than that or those, as the case may be, in which it was committed; or

"(2) the prosecution of the offense against State law has been impaired by the willful failure or refusal of the attorney general of the State or the governor of the State to exercise his authority with respect to such prosecution; and a sufficient time has elapsed since the offense against section 245 was committed to enable State law enforcement officers to begin the prosecution of the offense against State law."

SEC. 4. This Act shall take effect on January 1, 1950.

[H. R. 4682, 81st Cong., 1st sess.]

A BILL To provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles and parts according to the following table of contents, may be cited as the "Civil Rights Act of 1949".

TABLE OF CONTENTS

SEC. 2. (a) The Congress hereby finds that, despite the continuing progress of our Nation with respect to protection of the rights of individuals, the civil rights of some persons within the jurisdiction of the United States are being denied, abridged, or threatened, and that such infringements upon the American principle of freedom and equality endanger our form of government and are destructive of the basic doctrine of the integrity and dignity of the individual upon which this Nation was founded and which distinguishes it from the totalitarian nations. The Congress recognizes that it is essential to the national security and the general welfare that this gap between principle and practice be closed; and that more adequate protection of the civil rights of individuals must be provided to preserve our American heritage, halt the undermining of our constitutional guaranties, and prevent serious damage to our moral, social, economic, and political life, and to our international relations.

(b) The Congress, therefore, declares that it is its purpose to strengthen and secure the civil rights of the people of the United States under the Constitution, and that it is the national policy to protect the right of the individual to be free from discrimination based upon race, color, religion, or national origin.

(c) The Congress further declares that the succeeding provisions of this Act are necessary for the following purposes:

(i) To insure the more complete and full enjoyment by all persons of the rights, privileges, and immunities secured and protected by the Constitution of the United States, and to enforce the provisions of the Constitution.

(ii) To safeguard to the several States and Territories of the United States a republican form of government from the lawless conduct of persons threatening to destroy the several systems of public criminal justice and frustrate the functioning thereof through duly constituted officials.

(iii) To promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race or religion, in accordance with the undertaking of the United States under the United Nations Charter, and to further the national policy in that regard by securing to all persons under the jurisdiction of the United States effective recognition of certain of the rights and freedoms proclaimed by the General Assembly of the United Nations in the Universal Declaration of Human Rights.

(d) To the end that these policies may be effectively carried out by a positive program of Federal action the provisions of this Act are enacted.

SEC. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 4. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

TITLE I—PROVISIONS TO STRENGTHEN THE FEDERAL GOVERNMENT MACHINERY FOR THE PROTECTION OF CIVIL RIGHTS

PART 1—ESTABLISHMENT OF A COMMISSION ON CIVIL RIGHTS IN THE EXECUTIVE BRANCH OF THE GOVERNMENT

SEC. 101. There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission"). The Commission shall be composed of five members who shall be appointed by the President by and with the advice and consent of the Senate. The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in the office. Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made. Three members of the Commission shall constitute a quorum. Each member of the Commission shall receive the sum of $50 per day for each day spent in the work of the Commission, together with actual and necessary traveling and subsistence expenses incurred while engaged in the work of the Commission (or, in lieu of subsistence, a per diem allowance at a rate not in excess of $10).

SEC. 102. It shall be the duty and function of the Commission to gather timely and authoritative information concerning social and legal developments affecting the civil rights of individuals under the Constitution and laws of the United States; to appraise the policies, practices, and enforcement program of the Federal Government with respect to civil rights; and to appraise the activities of the Federal, State, and local governments, and the activities of private individuals and groups, with a view to determining what activities adversely affect civil rights. The Commission shall make an annual report to the President on its findings and recommendations, and it may in addition from time to time, as it deems appropriate or at the request of the President, advise the President of its findings and recommendations with respect to any civil-rights matter

SEC. 103. (a) The Commission may constitute such advisory committees and may consult with such representatives of State and local governments, and private organizations, as it deems advisable. The Commission shall, to the fullest extent possible, utilize the services, facilities, and information of other Government agencies, as well as private research agencies, in the performance of its functions. All Federal agencies are directed to cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(b) The Commission shall have authority to accept and utilize services of voluntary and uncompensated personnel and to pay any such personnel actual and necessary traveling and subsistence expenses incurred while engaged in the work of the Commission (or, in lieu of subsistence, a per diem allowance at a rate not in excess of $10).

(c) Within the limitations of its appropriations, the Commission is authorized to appoint a full-time staff director and such other personnel, to procure such printing and binding, and to make such expenditures as, in its discretion, it deems necessary and advisable.

PART 2—REORGANIZATION OF CIVIL RIGHTS ACTIVITIES OF THE DEPARTMENT OF JUSTICE

SEC. 111. There shall be in the Department of Justice an additional Assistant Attorney General, learned in the law, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall, under the direction of the Attorney General, be in charge of a Civil Rights Division of the Department of Justice concerned with all matters pertaining to the preservation and enforcement of civil rights secured by the Constitution and laws of the United States.

SEC. 112. The personnel of the Federal Bureau of Investigation of the Department of Justice shall be increased to the extent necessary to carry out effectively the duties of such Bureau with respect to the investigation of civil-rights cases under applicable Federal law. Such Bureau shall include in the training of its agents appropriate training and instructions, to be approved by the Attorney General, in the investigation of civil-rights cases.

PART 3—CREATION OF A JOINT CONGRESSIONAL COMMITTEE ON CIVIL RIGHTS

SEC. 121. There is established a Joint Committee on Civil Rights (hereinafter called the "Joint Committee"), to be composed of seven Members of the Senate,

to be appointed by the President of the Senate, and seven Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives. The party representation on the Joint Committee shall as nearly as may be feasible reflect the relative membership of the majority and minority parties in the Senate and House of Representatives.

SEC. 122. It shall be the function of the Joint Committee to make a continuing study of matters relating to civil rights, including the rights, privileges, and immunities secured and protected by the Constitution and laws of the United States; to study means of improving respect for and enforcement of civil rights; and to advise with the several committees of the Congress dealing with legislation relating to civil rights.

SEC. 123. Vacancies in the membership of the Joint Committee shall not affect the power of the remaining members to execute the functions of the Joint Committee and shall be filled in the same manner as in the case of the original selection. The Joint Committee shall select a Chairman and a Vice Chairman from among its members.

SEC 124. The Joint Committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such places and times, to require, by subpena or otherwise, the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, and to take such testimony, as it deems advisable. The provisions of sections 102 to 104, inclusive, of the Revised Statutes, as amended (2 U. S. C. 192, 193, 194), shall apply in case of any failure of any witness to comply with a subpena or to testify when summoned under authority of this section. Within the limitations of its appropriations, the Joint Committee is empowered to appoint and fix the compensation of such experts, consultants, technicians, and clerical and stenographic assistance, to procure such printing and binding, and to make such expenditures, as, in its discretion, it deems necessary and advisable. The cost of stenographic service to report hearings of the Joint Committee, or any subcommittee thereof, shall not exceed 25 cents per hundred words.

SEC 125. Funds appropriated to the Joint Committee shall be disbursed by the Secretary of the Senate on vouchers signed by the Chairman and Vice Chairman.

SEC. 126. The Joint Committee may constitute such advisory committees and may consult with such representatives of State and local governments and private organizations as it deems advisable.

TITLE II—PROVISIONS TO STRENGTHEN PROTECTION OF THE INDIVIDUAL'S RIGHTS TO LIBERTY, SECURITY, CITIZENSHIP AND ITS PRIVILEGES

PART 1—AMENDMENTS AND SUPPLEMENTS TO EXISTING CIVIL-RIGHTS STATUTES

SEC. 201. Title 18, United States Code, section 241, is amended to read as follows:

"SEC. 241. (a) If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise of enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

"(b) If any person injures, oppresses, threatens, or intimidates any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

"If any person goes in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, such person shall be fined not more than $1,000 or imprisoned not more than one year, or both; or shall be fined not more than $10,000 or imprisoned not more than twenty years, or both, if the injury or other wrongful conduct herein shall cause the death or maiming of the person so injured or wronged.

"(c) Any person or persons violating the provisions of subsections (a) and (b) of this section shall be subject to suit by the party injured, or by his estate, in an action at law, suit in equity, or other proper proceeding for damages or

preventive or declaratory or other relief. The district courts, concurrently with State and Territorial courts, shall have jurisdiction of all proceedings under this subsection without regard to the sum or value of the matter in controversy. The term "district courts" includes any district court of the United States as constituted by chapter 5 of title 28, United States Code (28 U. S. C. 81 et seq.), and the United States court of any Territory or other place subject to the jurisdiction of the United States."

SEC. 202. Title 18, United States Code, section 242, is amended to read as follows:

"SEC. 242. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; or shall be fined not more than $10,000 or imprisoned not more than twenty years, or both, if the deprivation, different punishment, or other wrongful conduct herein shall cause the death or maiming of the person so injured or wronged."

SEC. 203. Title 18, United States Code, is amended by adding after section 242 thereof the following new section:

"SEC. 242A. The rights, privileges, and immunities referred to in title 18, United States Code, section 242, shall be deemed to include, but shall not be limited to, the following:

"(1) The right to be immune from exactions of fines, or deprivations of property, without due process of law.

"(2) The right to be immune from punishment for crime or alleged criminal offenses except after a fair trial and upon conviction and sentence pursuant to due process of law.

"(3) The right to be immune from physical violence applied to exact testimony or to compel confession of crime or alleged offenses.

"(4) The right to be free of illegal restraint of the person.

"(5) The right to protection of person and property without discrimination by reason of race, color, religion, or national origin.

"(6) The right to vote as protected by Federal law."

SEC. 204. Title 18, United States Code, section 1583, is amended to read as follows:

"SEC. 1583. Whoever holds or kidnaps or carries away any other person, with the intent that such other person be held in or sold into involuntary servitude, or held as a slave; or

"Whoever entices, persuades, or induces any other person to go on board any vessel or other means of transportation or to any other place within or beyond the United States with the intent that he may be made a slave or held in involuntary servitude, shall be fined not more than $5,000, or imprisoned not more than five years, or both."

PART 2—PROTECTION OF RIGHT TO POLITICAL PARTICIPATION

SEC. 211. Title 18, United States Code, section 594, is amended to read as follows:

"SEC. 594. Whoever intimidates, threatenes, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing such candidate, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

SEC. 212. Section 2004 of the Revised Statutes (8 U. S. C. 31) is amended to read as follows:

"All citizens of the United States who are otherwise eligible by law shall be entitled to and allowed the same and equal opportunity to qualify to vote and to vote at any general, special, or primary election by the people conducted in or by any State, Territory, district, county, city, parish, township, school district, municipality or other Territorial subdivision, without distinction, direct

or indirect, based on race, color, religion, or national origin; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding. The right to qualify to vote and to vote, as set forth herein, shall be deemed a right within the meaning of, and protected by, the provisions of title 18, United States Code, section 242, as amended, section 1979 of the Revised Statutes (8 U. S. C. 43), and other applicable provisions of law."

SEC. 213. In addition to the criminal penalties provided, any person or persons violating the provisions of section 211 of this part shall be subject to suit by the party injured, or by his estate, in an action at law, suit in equity, or other proper proceeding for damages or preventive or declaratory or other relief. The provisions of sections 211 and 212 of this part shall also be enforceable by the Attorney General in suits in the district courts for preventive or declaratory or other relief. The district courts, concurrently with State and Territorial courts, shall have jurisdiction of all other proceedings under this section without regard to the sum or value of the matter in controversy. The term "district courts" includes any district court of the United States as constituted by chapter 5 of title 28, United States Code (28 U. S. C. 81 et seq.), and the United States court of any Territory or other place subject to the jurisdiction of the United States.

PART 3.—PROHIBITION AGAINST DISCRIMINATION OR SEGREGATION IN INTERSTATE TRANSPORTATION

SEC. 221. (a) All persons traveling within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, and privileges of any public conveyance operated by a common carrier engaged in interstate or foreign commerce, and all the facilities furnished or connected therewith, subject only to conditions and limitations applicable alike to all persons, without discrimination or segregation based on race, color, religion, or national origin.

(b) Whoever, whether acting in a private, public, or official capacity, denies or attempts to deny to any person traveling within the jurisdiction of the United States the full and equal enjoyment of any accommodation, advantage, or privilege of a public conveyance operated by a common carrier engaged in interstate or foreign commerce, except for reasons applicable alike to all persons of every race, color, religion, or national origin, or whoever incites or otherwise participates in such denial or attempt, shall be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not to exceed $1,000 for each offense, and shall also be subject to suit by the injured person or by his estate, in an action at law, suit in equity, or other proper proceeding for damages or preventive or declaratory or other relief. Such suit or proceeding may be brought in any district court of the United States as constituted by chapter 5 of title 28, United States Code (28 U. S. C. 81 et seq.), or the United States court of any Territory or other place subject to the jurisdiction of the United States, without regard to the sum or value of the matter in controversy, or in any State or Territorial court of competent jurisdiction.

SEC. 222. It shall be unlawful for any common carrier engaged in interstate or foreign commerce, or any officer, agent, or employee thereof, to segregate, or attempt to segregate, or otherwise discriminate against passengers using any public conveyance or facility of such carrier engaged in interstate or foreign commerce, on account of the race, color, religion, or national origin of such passengers. Any such carrier or officer, agent, or employee thereof who segregates or attempts to segregate such passengers or otherwise discriminate against them on account of race, color, religion, or national origin shall be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not to exceed $1,000 for each offense, and shall also be subject to suit by the injured person in an action at law, suit in equity, or other proper proceeding for damages or preventive or declaratory or other relief. Such suit or proceeding may be brought in any district court of the United States as constituted by chapter 5 of title 28, United States Code (28 U. S. C. 81 et seq.), or the United States court of any Territory or other place subject to the jurisdiction of the United States, without regard to the sum or value of the matter in controversy, or in any State or Territorial court of competent jurisdiction.

Mr. BYRNE. I am going to call first upon our chairman, Mr. Celler, to make whatever statement he wishes to for the record at this time, if it is agreeable to him.

STATEMENT OF HON. EMANUEL CELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. CELLER. Mr. Chairman and members of the subcommittee, H. R. 4682 to build up and to strengthen civil rights, and H. R. 4683 relative to antilynching, which are before you, are administration measures and have the wholehearted approval of the President. Enactment of these measures will fulfill the pertinent pledges of the Democratic platform of 1948 as therein clearly set forth.

The report of the President's Committee on Civil Rights, which dramatically revealed the weakness of our civil rights legislative structure, vitalized these issues. We cannot at so crucial a moment in our political, economic, and social development permit ourselves the luxury of a lethargic attitude. Apathy on these issues lead inevitably to misinterpretations, both domestically and abroad, of our democratic patterns.

Considerable criticism has been hurled at the administration for its alleged failure to implement its platform pledges. This criticism is unjustified, and as far as the House Judciary Committee, of which I am chairman, is concerned, is most mischievous. That committee has approved, and the House has passed, the Celler displaced persons bill, as recommended by the President. Subcommittee number three of the House Judiciary Committee is about to report to the full committee a bill, which bears my name, to plug the holes in the antitrust legislation, in order to prevent the further spread of monoplies in industry. The House Judiciary Committee will, I feel sure, approve such a bill. This bill follows another plan in the Democratic platform. The Judiciary Committee, I feel confident, will also approve the Celler-McGrath civil rights bill of 1949, and the Celler-McGrath antilynching bill, both now under consideration. These two Celler-McGrath bills implement the President's recommendations on civil rights.

With your kind permission, I would like to analyze the sections of the bills now before you, H. R. 4682, a bill to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States, and H. R. 4683, a bill to provide protection of persons from lynching, and for other purposes. I believe it is high time we dissipated the heat surrounding this subject matter and replaced it with some light. I know of no legislation before this Congress—and I say this with due deliberation—which has engendered more irrelevant emotionalism. The need for this proposed legislation emphatically exists, as will be shown, and the measures laid before you meet that need without violation to our Constitution and the principles of our democracy.

H. R. 4682 is divided into two titles. Title I contains provisions to strengthen the Federal Government machinery for the protection of civil rights and has three parts:

1. Establishment of a Commission on Civil Rights in the executive branch of the Government.
2. Reorganization of the civil rights activities of the Department of Justice.
3. Creation of a Joint Congressional Committee on Civil Rights.

Title II contains provisions to strengthen protection of the individual's rights to liberty, security, citizenship, and its privileges. It likewise has three parts:

1. Amendments and supplements to existing civil rights statutes.
2. Protection of right to political participation.
3. Prohibition against discrimination or segregation in interstate transportation.

Section 2 is a declaration of findings, purposes, and policy, stressing the basic doctrine of the integrity and dignity of the individual, the danger to national security and the general welfare arising out of the curtailment and denial of civil rights. It sets forth the national policy which is to protect the right of the individual to be free from discrimination based upon race, color, religion, or national origin as guaranteed by our Constitution and the United Nations Charter to which we are committed and to the United Nations Universal Declaration of Human Rights, thus relating the significance of secured civil rights to our role in international affairs.

Title I, part 1, section 101 creates in the executive branch of the Government a Commission on Civil Rights. The Commission is to be composed of five members to be appointed by the President by and with the advice and consent of the Senate. Each member of the Commission is to receive $50 a day while engaged in the work of the Commission, together with necessary traveling and subsistence expenses.

Section 102 provides for the duties and functions of the Commission which are, among other things, to gather all information relative to social and legal developments throughout the Nation concerning civil rights consistent with the Constitution and laws of the United States, to evaluate the policies, practices, and enforcement program of the Federal, State, and local governments as well as the activities of private individuals and groups. The Commission is to make an annual report to the President, incorporating therein its findings and recommendations. In addition to the annual report, it may report and recommend at any time it deems appropriate or at the request of the President. It will be noted that no hearing or subpena powers are conferred.

Section 103 provides for the use of advisory committees, consultation with public and private agencies and Federal agency cooperation. A paid staff is authorized as well as the use of voluntary services.

Section 111 of part 2 which deals with the reorganization of civil-rights activities of the Department of Justice provides for the appointment of an additional Assistant Attorney General to be in charge, under the direction of the Attorney General, of a Civil Rights Division of the Department of Justice.

Section 112 calls for the increasing of the personnel of the Federal Bureau of Investigation to investigate civil-rights cases, and for the Bureau to include special training of its agents for such investigations.

We now come to part 3, which establishes a Joint Congressional Committee on Civil Rights.

Mr. KEATING. Mr. Chairman, in part II, there, my recollection is that they already have a department or unit down there working on civil rights in the Department of Justice. I may be wrong about that.

Mr. CELLAR. That unit has been set up by the Attorney General. It is not a creation of Congress and there is no authorization by Congress.

Mr. FRAZIER. That is correct.

Mr. CELLER. This sets forth with fair detail what it shall do and how it shall function.

We now come to section 121, which provides for a Joint Congressional Committee on Civil Rights to be composed of 14 members, 7 Senators to be appointed by the President of the Senate, and 7 Members of the House of Representatives to be appointed by the Speaker, with due regard for party representation.

Section 122 concerns itself with the function of the joint committee which is to make a continuing study of matters relating to civil rights under the Constitution and laws of the United States, to study means of enforcing civil rights and to consult with the several committees of the Congress dealing with such legislation. Its functions are thus confined to investigations and studies without legislative powers.

Section 123 concerns itself with vacancies and selection of presiding officers.

Section 124 makes provisions for hearings, power of subpena, and expenditures.

Section 125 provides that funds appropriated to the joint committee shall be disbursed by the Secretary of the Senate on vouchers signed by the chairman and vice chairman.

Section 126 authorizes the use of advisory committees and consultation with public and private agencies.

We come now to changes in existing law. This is undertaken in title II, part 1.

Section 201 amends title 18 of the United States Code, a criminal conspiracy statute, which has been invoked to protect federally secured rights against encroachment by both private individuals and public officers. The word "citizen" therein is deleted and the phrase "inhabitant of any State, Territory, or district" is substituted. It has been held that the word "citizen" deprives an alien from the benefits of the section. "Inhabitants," on the other hand, would include citizens as well as aliens as it does in section 242 of title 18 of the United States Code which is aimed at State officers who deprive inhabitants of the rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. In other words, those two sections are made consistent.

Without the addition of subsection (b), section 241 would still remain only a conspiracy provision. The proposed new subsection (b) extends responsibility to persons acting individually. In addition thereto, penalties are set in subsection (b) at $1,000 or imprisonment for not more than 1 year or a fine of $10,000 or 20 years' imprisonment, or both, if death or maiming results.

Subsection (c) is likewise new. It provides the necessary authorization, an authorization not heretofore clearly set forth, for the bringing of proceedings for damages. Therein, jurisdictional provision is given Federal district courts and the State and Territorial courts to hold civil proceedings as was done under the Emergency Control Act of 1942 and under the Federal Employers' Liability Act. The money value requirement of $3,000 or more for Federal district court jurisdiction as has been often applied to individuals has been removed by the language, "without regard to the sum or value of the matter in controversy."

Section 202 amends title 18, United States Code 242, only in regard to penalty. The violation of this section still remains a misdemeanor since there are less difficulties presented in prosecution by information rather than by indictment. However, in cases resulting in death or maiming, a fine of not more than $10,000 or imprisonment for 20 years, or both, are imposed.

Section 203, on page 12, adds a new subsection to section 242 of title 18 of the United States Code. Therein, the rights, privileges and immunities referred to in title 18, United States Code, section 242, are set forth, not as a matter of limitation or exclusion, but rather as a matter of clarification. The intent is to provide an enumeration of some of the rights, privileges, and immunities secured and protected by the Constitution and laws of the United States, of which inhabitants shall not be deprived. In the recent case of *Screws* v. *United States* (325 U. S. 91 (1948)), it was held that the Government, in order to obtain a conviction in section 242, is required to prove, and the judge must adequately instruct the jury, that the defendant has "willfully" reprived his victim of a constitutional right, which specific right the defendant had in mind at the time. Proof of a general purpose alone may not be enough. The enumerated rights do not create any new right. These have all been upheld by the courts.

1. The right to be immune from executions of fines without due process of law.
2. The right to be immune from punishment for crime except after fair trial and due sentence.
3. The right to be immune from physical violence applied to exact testimony or to compel confession of crime or alleged offenses.
4. The right to be free of illegal restraint of the person.
5. The right to protection of person and property without discrimination by reason of race, color, religion, or national origin.
6. The right to vote as protected by Federal law.

I draw the attention of this committee to the line of court decisions which have upheld these rights as enumerated: *Culp* v. *United States* (131 F. (2d) 93); *Screws* v. *United States* (325 U. S. 91); *Crews* v. *United States* (160 F. (2d) 746); *Moore* v. *Dempsey* (261 U. S. 86); *Mooney* v. *Holohan* (294 U. S. 103); *Chambers* v. *Florida* (309 U. S. 227); *United States* v. *Sutherland* (37 F. Supp. 344); *Catletts* v. *United States* (132 F. (2d) 902); *United States* v. *Trierweiler* (52 F. Supp. 4); *Yick Wo* v. *Hopkins* (118 U. S. 35); *United States* v. *Classic* (313 U. S. 299); *United States* v. *Saylor* (322 U. S. 385); *Smith* v. *Allwright* (321 U. S. 649).

The old civil-rights laws protect, presumably, any and all rights established of the Constitution a Federal statute. But the Constitution nowhere lists personal rights which may be protected. Nor does any Federal statute enumerate them. Thus the civil-rights section of the Department of Justice was compelled to employ an experimental technique and endeavor to extend the list of civil rights, case by case—civil rights denied or abridged or interfered with by State officers and individuals. The enforcement of civil rights also ran into the legal defense that criminal laws must adequately define the crime or conduct forbidden. To do away with the defense of vagueness of statute we set forth and enumerate and define as best we

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may, and with fair degree of clarity just what these rights are. Thus the defendant has sufficient warning that his conduct is forbidden.

Following the section concerning enumeration and defining of rights, is section 204 which amends section 1583 of title 18 of the United States Code. This statute provides for the punishment of the kidnaping or enticing of persons for purposes of subjecting them to slavery or involuntary servitude. The amendment makes clear that the holding in involuntary servitude is punishable. The insertion of "other means of transportation" is simply to bring the statute up to date, supplementing the word "vessel."

We come now to part 2 of title 2 which concerns itself with the protection of right to political participation. Thus section 211 of the bill is an amendment of section 1 of the present Hatch Act. Presently, under this section, intimidation and coercion for the purpose of interfering with the right of another to vote as he chooses at elections for national office is punishable. The purpose of this amendment is to make the provisions applicable to primary and special elections as well as to general elections for Federal office. The existing language is "any election." The amendment would make it "any general, special, or primary election."

Section 212 amends section 2004 of the Revised Statutes. Section 2004 declares it to be the right of citizens to vote at any election by the people in any State, Territory, county, municipality, or other territorial subdivision without distinction as to race, color, or previous condition of servitude. In order to avoid any question as to the kind of punishment or remedy which is available in protection of the right to participate politically, the amendment inserts a specific reference to the two basic criminal and civil remedy provisions directed at State officers, namely, 18 United States Code 242 and 8 United States Code 43. Likewise, the phrase is added "and other applicable provisions of law" to preclude any implication that by specifying two statutory sections there is an exclusion of other sections of the criminal and civil statutes. The words "religion or national origin" have been substituted for the words "previous condition of servitude." Again, I call the attention of the committee to a line of court decisions which hold that the guaranty against distinctions in voting based on race or color is expressly authorized by the fourteenth and fifteenth amendments to the Constitution, and that the equal protection clause of the fourteenth amendment upholds the doctrine that distinctions in voting based on religion or national origin are arbitrary and unreasonable classifications:

United States v. *Reese* (92 U. S. 214); *Smith* v. *Allwright* (321 U. S. 649); *Chapman* v. *King* (154 F. (2d) 460); *Nixon* v. *Herndon* (273 U. S. 536); *Nixon* v. *Concon* (286 U. S. 73); *Cantwell* v. *Connecticut* (310 U. S. 296); *Hirabayashi* v. *United States* (320 U. S. 81); *Truax* v. *Raich* (239 U. S. 33).

Section 213 of this bill supplements the section just discussed and the one before it by creating civil remedies for their violations, and to authorize the bringing of suits by the Attorney General in the district courts for preventive, declaratory, or other relief.

The last part of this bill, part 3, deals with prohibitions against segregation in interstate transportation. The Supreme Court has stated time and again that constitutional rights are personal and not racial.

Thus in the case of *Morgan* v. *Virginia* (328 U. S. 373), the Court held a State statute which required segregation of the races in motorbusses unconstitutional in the case of an interstate passenger as a burden on interstate commerce, but that case dealt only with State law and not with the action of the interstate carriers themselves who may and do continue to segregate. Hence, the necessity for section 221 of this bill which states that—

> All persons traveling within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, and privileges of any public conveyance operated by a common carrier engaged in interstate or foreign commerce, and all the facilities furnished or connected therewith, subject only to conditions and limitations applicable alike to all persons, without discrimination or segregation based on race, color, religion, or national origin.

Section 221 (b) makes punishable by fine—there is no imprisonment penalty—and subject to civil suit, the conduct of anyone who denies or attempts to deny equal treatment to all travelers. Civil suits may be brought in the State courts as well as in the Federal district courts.

And finally, section 222 makes it unlawful for the common carrier engaged in interstate or foreign commerce to segregate or otherwise discriminate against passengers. Violations are subject to fine and civil suit in State as well as Federal courts.

So much for the bill itself. I have gone into this detailed analysis because it was my purpose to show that nowhere has this proposed legislation overstepped constitutional limitations. To deny that reason exists for the necessity of such legislation is to deny all the evidence of our senses. As has been aptly put, we have a moral reason, an economic reason, and an international reason for enacting this legislation now. I believe the President's Committee on Civil Rights was completely justified when it stated, "The pervasive gap between our aims and what we actually do is creating a kind of moral dry rot which eats away at the emotional and rationl bases of democrtic beliefs." Where disenfranchisement, political coercion, and intimidation exist based on race, color, religion, or national origin, there exist alongside of it the belief of might over right, disrespect for the law, and a corruption of all human values. You cannot keep the dismaying effects of such kind of thinking confined to the locale of its origin; it seeps through to pervade the whole national scene. You cannot ask local enforcement when those responsible for the enforcement refuse to accept these responsibilities. Hence, the necessity for strengthening the arm of the National Government.

Much has been made of the behavior patterns of the Negroes. How many of us would have different patterns if we were denied equality of opportunities, oppressed by fears of physical violence, denied a voice in the affairs of the Nation, segregated and discriminated against and knowing that even the law offers no protection?

Only recently the United States and Britain started treaty action against Bulgaria, Hungary ,and Romania, accusing them of denying civil rights to their inhabitants. You may well believe me that this irony is not lost upon our foreign friends and foes alike when they can point to our national indifference to the denial of civil rights to our own inhabitants. Our international cloak of virtue slips a bit from our shoulders, don't you think?

There is no attempt in the proposed bills to legislate prejudice out of existence. But what we can do is to legislate the manifestations of this prejudice out of existence. We are not attempting herein to outlaw prejudice; we are attempting to outlaw lawlessness. There is not a provision in H. R. 4682 which can be called unreasonable or arbitrary. It creates no new rights; it only secures existing ones. It closes gaps and cuts into the heart of the relevant statutes to reveal fully the congressional intent. For example, in the establishment within the FBI of a special unit of investigators trained in civil rights work and in the reorganization of the civil rights section of the Department of Justice, no radical departure is made. The FBI is already charged with the responsibility of enforcing Federal law which includes the already existing civil rights statutes. A civil rights section of the Department of Justice already exists. If these functions are to exist, why should they not be performed in the most effective way? The outlines exist and if we found the outlines a pertinent part of our national machine, why do we not give them substance?

And so it is with the existing statutes, sections 241 and 242 of title 18 of the United States Code, and with the amendment to section 594 of title 18 and section 2004 of he Revised Statutes. If reason at all exists for their being on our books, then sufficient reason exists for giving them meaning and strength.

And finally, I ask this committee to remember we are concerned with human beings, and that nobody, no group, no faction, no sect, has the moral right to play God and arrogate unto himself or themselves the meting out of the reward, privileges, or immunities based on color, race, creed, or national origin.

You have before you, as well, gentlemen, the consideration of H. R. 4683, a bill to provide protection of persons from lynching and for other purposes. This proposed antilynching act defines that a lynching may be committed by an assemblage of two or more persons. It is directed against two general types of lynch mob violence, namely, that committed or attempted because of the race, color, religion, or national origin of the intended victim, or that attempted or committed by way of correction of punishment of the victim who is either in the custody of a peace officer or suspected of or charged with or convicted of a criminal offense.

The bill provides for the punishment of any member of a lynch mob, as well as a person who instigates, incites, organizes, or abets in the commission of a lynching. The penalties provided are graded according to the seriousness of the offense and range from a fine of $1,000 to $10,000 or imprisonment from 1 year to 20 years, or both.

It also provides for the punishment of peace officers who neglect, refuse, or willfully fail to make diligent efforts to prevent a lynching or to protect a person from a lynching mob. It also provides punishment for the peace officer who willfully fails to make diligent efforts to apprehend and to retain in custody the members of a lynching mob. The coverage of this particular section extends both to State and municipal peace officers, as well as Federal peace officers where the United States exercises exclusive jurisdiction. Another section amends the present kidnaping law so as to make punishable the transportation, in interstate or foreign commerce, of persons abducted or held because of race, color, religion, or national origin, or for the

purposes of punishment, correction, or intimidation. In 1937 and again in 1940, an antilynching bill passed the House and was reported in the Senate. In the Eightieth Congress, H. R. 5673 was reported by this committee.

No year since 1882 has been free of lynching; 1949 was no different. The flagrant incident at Irwinton, Ga., where a Negro was taken out of jail and shot to death, is only too familiar in detail. Yes, it has been said that lynchings have decreased, but it is still possible for a mob to abduct and murder a person in some sections of the country with almost certain assurance of escaping punishment for the crime. The decade from 1936 to 1946 saw at least 43 lynchings. No person received the death penalty, and the majority of the guilty persons were not even punished. The reasons for this are quite obvious. The State and local governments refuse to punish lynchers. Participation by State officials, actively or passively is not uncommon. Local government and citizens refuse to cooperate. There were over 200 attempted lynchings in the past decade, which is a clear indication of how far this idea of lawlessness has spread. There is no moral will in these communities to view these lynchings as violations of the law. It is a terrorist device and, as such, clearly against the Constitution of the United States: Article 4, section 4 of the Constitution states, "The United States shall guarantee to every State in this Union a Republican form of government * * *." A lynching is government by mob and not government by law; it invalidates the courts, the very cornerstone of government, and nullifies the law. Those who hold a Federal antilynching law is unconstitutional are using the veil of the Constitution to protect and uphold unconstitutionality.

This bill is within the ambit of the fourteenth amendment which reads:

> 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.

I draw attention to the fact that the antilynching bill as heretofore passed by the Congress was far more drastic than the bill I offered and which is before you. You may remember among the drastic provisions contained in those former antilynching bills passed by the House there were provisions which bore heavily against the various counties and municipalities where a lynching occurred. The people of those communities were made responsible for money damages. I think that was rather harsh and I opposed those provisions at the time the various antilynching bills came before this committee because it is like visiting the sins of a few upon the many.

The bill before you contains no such drastic provisions.

Mr. KEATING. You are opposed to any provisions allowing compensation to the victims of lynching or to their families?

Mr. CELLER. No; I am not opposed to that. I am opposed to the compensation being drawn from persons who may be utterly innocent. In other words, I am opposed to having the county made responsible in the sense that the county must pay because that means that money must be obtained by taxation and innocent people have to suffer.

Mr. KEATING. If the officials of the county, due to their failure to act, bring about or cause the lynching or permit it to occur, why should there not be liability upon that community for their action?

Mr. CELLER. I make the individuals who are negligent, who are guilty of malfeasance, suffer——

Mr. KEATING. In most cases that would be no recompense to the injured or his family.

Mr. CELLER. Not necessarily. However, I feel the guilt must always be personal. I do not think guilt of the few should be visited on the many. I think from a practical, realistic angle, we would have a better chance of getting some action on a bill of this character than on a bill heretofore reported out by this committee and which passed the House, which involved collective or community sanctions.

Mr. KEATING. All of those bills, as I recall it, including the one favorably reported by the committee last year, did contain a provision for compensation to the victims of lynching or their families. Am I mistaken?

Mr. CELLER. That is true. This is a departure from that procedure and the bill I have offered follows recommendations made by the administration. It follows to the letter. The administration feels that those provisions which punish a whole political unit and which were contained in those bills passed by us heretofore should be deleted.

Mr. JENNINGS. You say this is the administration bill?

Mr. CELLER. Yes, sir; this is offered by myself here and by Senator McGrath in the Senate and an exact bill was offered by Senator Ferguson which already has the approval of the Senate Judiciary Committee.

Mr. KEATING. The Ferguson bill in the Senate is a duplicate of your antilynching bill here?

Mr. CELLER. Yes, sir.

Mr. KEATING. In just this form it has been favorably reported by the Senate Judiciary Committee?

Mr. CELLER. Substantially so. There may be some slight variance.

In his message to Congress on February 2, 1948, the President stated the case most clearly:

> The Federal Government has a clear duty to see that constitutional guaranties of individual liberties and of equal protection under the laws are not denied or abridged anywhere in our Union. That duty is shared by all three branches of the Government, but it can be fulfilled only if the Congress enacts modern, comprehensive civil-rights laws, adequate to the needs of the day, and demonstrating our continuing faith in the free way of life.

H. R. 4682 and H. R. 4683 are administration bills, but they are by no means partisan. I ask your most favorable consideration of these measures, gentlemen, and to exercise justly your responsibility to enact such legislation as will really and truly make this country as free and as fearless as are the words of the preamble to our Constitution.

Mr. BYRNE. We are very thankful for your contribution.

Mr. KEATING. May I ask, Mr. Chairman, whether in the Senate there has been any hearing or other action taken on the parallel measure to H. R. 4682?

Mr. CELLER. H. R. 4682 is what we call the basket civil-rights bill. That has been referred to the Senate Judiciary Committee but, as far as I know, no action has been taken. I do not know that any hearings have been scheduled. I cannot answer that.

Mr. BYRNE. I will ask Congressman Keating to make his contribution to the committee.

STATEMENT OF HON. KENNETH B. KEATING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. KEATING. Mr. Chairman and members of the committee, I appear in support of antilynch legislation generally and specifically H. R. 443, which I introduced on the opening day of this session. This measure is identical with one which I offered in the last Congress.

Mr. CELLER. May I interrupt you? To make assurance doubly sure, that what I said was accurate, I am having a check made as to Senator Ferguson's bill being exactly identical with mine. There may be some small deviations and, if there are, I will correct the record.

Mr. BYRNE. That will be all right.

Mr. KEATING. This bill recites the undoubted fact and makes it a finding of the Congress that, notwithstanding the provisions of the fourteenth amendment to the Constitution, citizens of the United States and other persons have been denied the equal protection of the laws through mob violence, in many instances as the result of acts of omission on the part of State or local officials. The bill recites that these omissions on the part of State and local officials are not only contrary to the fourteenth amendment, but also to the law of Nations, which requires that every person be secure against violence to himself or his property by reason of his race, creed, color, national origin, ancestry, language, or religion, and specifically contrary to article 55 of the Charter of the United Nations, which pledges the United States to promote universal respect for, and observance of, human rights and fundamental freedoms.

This bill provides a punishment by fine of $10,000 or imprisonment not exceeding 20 years, or both, upon conviction of participation in a lynching, and goes on to prescribe a fine of $5,000 or imprisonment not exceding 5 years, or both, for any official found guilty of having wilfully failed to protect a person in his custody from lynching or to apprehend or prosecute the members of a lynch mob.

The measure further provides for compensation to the victim of a lynching or, if it results in his death, to his next of kin in an amount not less than $2,000 and not more than $10,000, to be determined in a court of law. To make this provision effective, it is stipulated that upon proper certification by the Attorney General of the United States the amount of such a judgment may be paid out of unapportioned funds in the Treasury of the United States and be deducted from the amounts payable to the State, where the violation occurred by reason of any of the many Federal grant-in-aid programs. It is believed that this provision will have a salutary effect in bringing the pressure of sovereign States to bear on local officials to wipe out this dark plot on the fair name of our great country.

Of the dozen bills which we have under consideration, H. R. 443 is the only one containing this provision to put real teeth into the legislative enactment granting monetary recompense to those who suffer at the hands of lynch mobs, or to their next of kin. Unless there is embodied in the legislation some such provision, I feel its purposes may be frustrated and rendered negatory.

The measure introduced by the chairman was designated as the administration's, and that bill is silent on that point. Most of the other bills which we are considering have provisions—in fact, I believe all of

them, except the administration measure—have provisions for compensation to victims of lynching. They provide, in general—H. R. 443 and the others which have been introduced—for the payment of usually a sum not less than $2,000 or not more than $10,000 as monetary compensation for injury or death to a victim of a lynch mob and provide that the governmental subdivision which is sought to be held liable may prove by a preponderance of the evidence as an affirmative defense that the officers charged with the duty of preserving the peace and the citizens of that community, when called by the officer, used all due diligence and all powers vested in them for the protection of the person lynched. If they are able to establish that, then they have a complete defense to the action. And they also contain this additional protective provision that the satisfaction of a judgment against one governmental subdivision shall bear any further proceedings against other governmental subdivisions.

In other words, it is the concensus of those who have introduced legislation that there should be some provision granting such monetary compensation under circumstances showing as they would appear to me to show, a complete lack of action on the part of a particular subdivision.

Now, I not only feel that any bill which we report favorably should contain such a provision, but I feel further that it should contain the precise provision contained in H. R. 443 and which is unique so far as this particular item is concerned.

My bill provides that upon proper certification by the Attorney General, that a judgment has been obtained against a particular municipality or county for failure to perform its duties, the amount of such a judgment may be paid out of unappropriated funds in the Treasury and be deducted from the amounts payable to the State where the violation occurred by reason of any of the many Federal grant-in-aid programs. It is believed that this provision would have a salutary effect in bringing the pressure of sovereign States, the States themselves to bear on local officials to wipe out this blot on the fair name of our country.

In other words, that if such a provision were contained in legislation, it would mean that the State which would be liable to have a deduction from its grant-in-aid program would bring pressure upon the local officials to do their duty, the failure to do which had resulted in the incident giving rise to the liability.

It is well-known to lawyers that in any jurisdiction technical difficulties exist to the collection of a money judgment against a municipality or the State itself which are not present in the case of an established liability against an individual. Thus, oftentimes, in fact, so far as I am aware, without exception, it is necessary to bring a separate action in the nature of a mandamus proceeding to compel the legislative authorities of a city, town, or county to levy a tax to collect a judgment, unless they take such a step on their own initiative. In addition, I entertain the fear that those States which might be unsympathetic to this Federal legislation might pass laws or take administrative action which would render it even more difficult than it now is to turn the piece of paper which we call a judgment into cash in hand for the unfortunate victims of lynch mobs.

It is submitted that this provision to which I have referred will serve the useful purpose of insuring that the legislation is effective

to accomplish the purposes stated. I hope in the framing of legislation this suggestion may meet sympathetic treatment.

In the hearings last year on antilynch legislation, I stressed this point and was joined in that regard by my distinguished colleague from Massachusetts, Mr. Heselton. He was not able to be here this morning because of important committee assignments in his own committee, but he has authorized me, and indeed requested me, to state that he joins in urging inclusion of such a provision in any legislation favorably reported.

To our credit let it be said that fortunately the crimes of violence against which this bill is directed seem to be on the wane. It may be conceded also that the long-range solution of this problem lies rather with the aroused conscience of our people than in the enactment of punitive measures. Yet the fact remains that from the year 1889 through 1944 lynch mobs have caused the death of 5,144 persons in the United States. These are the latest official figures available to me. I understand, however, that there were only two recorded lynchings last year and one in the year 1949.

Many of these unfortunates who suffered the extreme penalty had never been guilty of anything more than a minor misdemeanor or sometimes simply an indiscreet statement or motion. It is cold comfort to the family of the victim of such an outrage in the year 1949 to say that the situation is improving. This Congress should act and act now to put an end to a vicious and indefensible practice.

Either through choice or chance, our Nation has assumed a position of world leadership. We have made strides of material progress unparalleled probably in any other era of history. We shall, however, be faithless to our world responsibility and the great challenge and opportunity which is ours if we fail to match this advancement with comparable progress in matters of the spirit. We righteously and indeed sincerely preach to the world the gospel of the dignity of the individual and advocate the perpetuation and strengthening of fundamental freedoms, which must include freedom from violence and from the fear thereof. Yet these protestations become as "Sounding brass and a tinkling cymbal" when we permit a condition to exist in our own country where, even though infrequently, our citizens are permitted to become the victims of mob violence, usually because they are a part of a minority either in race, creed, color, national origin, or religion. The speedy enactment of legislation to remedy this situation is necessary not only for our own domestic tranquility, but also the maintenance of our proper position as a leader of other nations.

I would like to just address a few remarks to H. R. 4682 introduced by the distinguished chairman of our committee just this last month. I know he is sincere in the action he has taken. I know him to be a stanch advocate of civil-rights measures. As always, I respect his position in this matter. There are certain specific provisions relating to definite offenses in H. R. 4682 contained in title II which have much merit and should certainly receive our careful study and sympathetic consideration.

However, if the provisions of this bill calling for the creation in the executive branch of still another Commission on Civil Rights, the establishment in the Department of Justice of a special Assistant Attorney General in Charge of Civil Rights Division, and the

creation of a Joint Congressional Committee on Civil Rights are intended to be the sum total of the action taken by this Congress on this subject, then I must violently protest.

I do not want to be misunderstood. I do not believe our distinguished chairman would knowingly lend himself and his great talents to such a maneuver. It is broadly rumored, however, that the only action which will be taken in this Congress on this all-important subject will be the creation of these additional commissions and committees.

Mr. CELLER. Will the gentleman yield at that point or would you rather wait?

Mr. KEATING. I would be glad to wait and then would be very glad to have a very frank discussion with the chairman about my views.

I would not want to appear partisan in my remarks despite the capital "D" accorded to the word "democratic" in the statement filed with us by the chairman of our committee. I would be willing, however, to open myself to the charge of partisanship if the net result of my statements were to spur the majority forces into action on this subject which they would not otherwise take.

This should not be a partisan matter. It was the President, himself, however, who chose to make it such last fall. Except for his statements in support of civil rights, after leaving the Senate of the United States, there is certainly nothing in his record in that body which would lend support for the theory that he is likely to take the lead in insisting upon action in this Congress.

We must turn to such leaders as our own chairman to take this action and the chairman of this subcommittee, who I know is equally sincere in his desire to see legislation enacted, rather than to the present occupant of the White House.

I point that out because on April 17, 1945, just after he had assumed the Presidency, he was asked by a reporter to state his views on such questions as pending legislation for abolition of the poll tax, antilynching legislation, and the establishment of a Fair Employment Practices Committee.

His only reply was that the reporter should read the Senate record of Harry S. Truman. That record shows no vigorous support of any of this legislation when the President of the United States was the United States Senator from Missouri.

True, he never spoke against it; neither did he speak for it. Most of the Senate votes were the votes which he cast on procedural matters in which the issue was not presented directly and unequivocally. On the only occasion when it was so presented, on August 25, 1942, the Missouri Senator voted against a provision to abolish State poll taxes as a qualification for members of our armed forces to vote in Federal elections.

On other occasions he was found on both sides of civil-rights measures. In 6 out of 17 votes, more than one-third, he did not vote or record his position in any way. It is for this reason that I say this is a field in which I submit the majority members who sincerely want to see this Congress act on these measures cannot look to the White House for active guidance.

I have made these observations with the utmost respect for my distinguished colleagues and friends on this committee who are members

of the majority for the purpose of clearing some of the dust raised last fall and focusing attention upon the source of responsibility for legislative action in this Congress.

If the shedding of light on this problem results in engendering so much heat that something is done, I shall have served my purpose. Both parties in their platforms pledged favorable action on civil-rights measures. The Republican Party, I feel confident, is prepared to deliver by the overwhelming votes of its members in both Houses.

We await the opportunity to cast our vote.

Mr. FRAZIER. Do you think they can get a vote in the Senate?

Mr. KEATING. I think so. I definitely think so; but we want a vote not on bills for the creation of further commissions or committees, but on measures which the people have been told will be passed by this Congress. We urge that we be not denied this privilege through the failure of the majority which controls the scheduling of legislation to bring before us the measures which both of our parties have told our people will be enacted into law.

I would be very glad at this point to yield to my distinguished chairman.

Mr. CELLER. I am sure that I voice the opinion of my colleagues who are on the subcommittee when I state that we are very grateful to you for the support that you will give to an antilynching bill, whatever form it may take, and on the bill which will strengthen civil rights.

I take it you are in favor of title II but you question the partisan spirit, as you put it, with which part I is offered which would establish a Commission on Civil Rights in the executive branch which would be reorganizing the civil-rights activities of the Department of Justice and which would create a joint committee: Congressional Committee on Civil Rights.

I want to say this, that I personally wrestled with the recommendations of the President's Committee on Civil Rights, Commission on Civil Rights, so as to endeavor to compute their recommendations into some concrete legislative proposals. I worked assiduously with the members of our staff of the Judiciary Committee and we had prepared a number of bills, and then I was asked by the leaders on our side of the House to offer the bill, H. R. 4682. I was informed specifically by the leaders that they in turn had been empowered—had been importuned by the White House to get action on these recommendations made by the President's Commission.

Having heard from the House leadership that our committee should expedite action, I then went forward to offer these bills. They are a little different than the original bills that I contemplated. In fact, they are rather stronger than the bills I had under contemplation. So I can say I think unequivocally, in the words of common parlance, that the Administration means business on this thing. They are very anxious to get some action taken and I am sure that there is no desire to make this in any way partisan.

When the President appointed the members of his Commission, you will note that the complexion of the Commission was such as to clearly indicate nonpartisanship. If you will read the list of names constituting that Commission, you will find both Republicans and Democrats on it and those members united in unanimous opinion made rec-

ommendations which are computed into the bills that we have before us.

Of course, we welcome any suggestions or amendments or changes to perfect the bill. I know that out of a wealth of wisdom and knowledge on the subject, men like yourself, you and like-minded on the committe who happen to be on the other side of the political fence from us, will render yeoman's service.

Mr. KEATING. I appreciate the gentleman's remarks and in what I have had to say I have intended simply to clear the air.

As our chairman knows, and as I have stated, I am confident of his complete sincerity in introducing this bill. I am hopeful for action. It is because of my great desire for action that I have said what I have said.

That is all I have to contribute, Mr. Chairman.

Mr. BYRNE. Thank you, Mr. Keating.

We will now hear from Congressman Hays.

STATEMENT OF HON. BROOKS HAYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. HAYS. Mr. Chairman, I regret very much to oppose the bill offered by the distinguished chairman of this committee and also the bill proposed by my friend from New York, Mr. Keating. The chief objection to the bill submitted was stated by the chairman himself, the imposing of a penalty upon citizens of a county in which a lynching takes place. I feel from an actual knowledge of the situation in the area in which lynchings in the past have occurred that this is not a realistic nor is it a just proposal.

I have the greatest respect for the gentleman from New York. I know he approaches this problem without partisanship and with great sincerity, and I do not enjoy differing with him on this particular feature of the bill; but it is of such substantial importance that I feel the committee would make a grave error if they reported a bill with these penalties.

Mr. Chairman, I have tried to think constructively about this legislation. I am opposed to my President's civil-rights proposals generally and yet, I am convinced after reflection that much good can come out of the present discussions, the deliberations upon those things that are basic in our democracy.

I feel, however, that one cannot be accused, justly accused, of partisanship if he suggests that what people think about any legislation has a bearing on its effectiveness.

Abraham Lincoln was certainly never guilty at any time of race prejudice and yet in his Peoria statement he said that it would be fatal—I was looking for the date, Mr. Chairman, and I will have it for the record because I want to identify it—October 16, 1854—here are his exact words: "My own feelings will not admit of this." He means by this, certain concepts of social relationships or social equality—if I might for the record, and to state my own philosophy—suggest that I never use that expression. I use the expression "social intermingling" because when I defend the patterns of life to which we are conditioned in my State, I do it with great respect for those who are in the minority and who sometimes criticize those patterns, and yet the races, both races, are conditioned to them. The Great

Emancipator was speaking here of that idea of social intermingling.

Now, note these words:

> Whether this feeling accords with justice and sound judgment is not the sole question if indeed it is any part of it. A universal feeling, whether well or ill founded, cannot safely be disregarded.

Now, Mr. Chairman, that is not with specific reference to lynching legislation. It is with reference to the whole civil-rights controversy and it would be utterly impossible for this committee or for the Congress to consider this proposal without considering the background of our thinking and of the Nation's thinking in which it is submitted to the Congress. To that extent, there is appropriate reference always to the civil-rights controversy.

The one thing in the civil-rights proposals that has given me great concern is this question of lynching because it does involve something that is fundamental in human life and in our western civilization. We boast of our Anglo-Saxon system of jurisprudence. It is our pride and the right of every man to a trial—when he is accused or suspected of crime—is a precious right that must be preserved.

Those of us who in times past opposed the more sweeping proposals of Federal action have done it not because we are indifferent to that right but with the feeling that it can best be preserved by leaving the States empowered exclusively to deal with those who engage in mob action.

It rests not only upon those legal concepts of reserved powers of the States; and ours, we must be reminded, though it is trite, is a Federal Government and not a unitary government. It rests upon the comity of State-Federal relations.

While, in the technical sense, some antilynching bill might be approved that would pass muster constitutionally, it would set in operation certain counterinfluences in the South that would cancel every theoretical gain made by the minority.

I do not deny that the racial question is involved. I think it is appropriate to point out, however, that members of the majority have been lynched, that this terrible evil of mob violence often disregards those considerations and results in the taking of life of a member of the majority group, the racial majority group, and we have been outraged by both incidents, those affecting white victims and Negro victims.

I say that the question of lynching engaged my thoughts more than any other in the civil-rights proposal because, Mr. Chairman, it is one proposal about which there may be doubt as to soundness but there can be no doubt whatever about its involving a civil right.

Many of the other ideas advanced by the President belong not in the category of civil rights but in the category of social aspirations. Some of them are quite valid. Some of them are questionable; but they are not rights.

I would place in that category the right to vote without paying a reasonable tax of $1 for the privilege. The Supreme Court has said time and again that voting is a privilege and not a right. So it may be a social aspiration by the minority that is disadvantaged economically to secure a greater weight in the voting by eliminating economic considerations altogether, but it is still a social aspiration and not a civil right.

So, with the question of segregation, the most difficult of all these problems. The right to ride on a particular coach is not in my judgment a civil right; it may be a valid social aspiration. I represent 75,000 Negroes. I would be unfit to hold my seat in the Congress if I were indifferent to those aspirations, to say nothing of their rights, and I do not disparage their aspirations.

I have said all of this, Mr. Chairman, in order to highlight the one point that I want to make that on the question of lynching there can be no question about it. The President deals with a civil right. The sole question is: How we can best accomplish that result of putting down altogether this terrible evil.

I know it is an evil. On two occasions I have seen communities crushed by outrages of that kind. As a boy, in my home community I felt the pall of terror and anxiety that followed it. Later, in Little Rock, in an unhappy incident. That is the reason I must oppose Mr. Keating's proposal to come in their hour of distress and say that they should pay a penalty because lawless people among them who live everywhere have done a thing which cannot be defended under any circumstances.

Mr. KEATING. I have the utmost respect for the gentleman's viewpoint. I realize that conditions exist in other parts of the country which do not in my part of the country. I realize that the gentleman's attitude on this subject exhibits vastly more than the average broadmindedness found among those who represent areas such as the gentleman represents.

It is a fact that even the polls—and I hope you will not get me into a discussion of the value of polls—that polls in the South indicate that in the Southern States there is a substantial majority in favor of some antilynching legislation. Is that not the gentleman's understanding?

Mr. HAYS. I am glad to have that reference made. I think there is a good deal of significance to it.

I would be inclined to question the accuracy of the Gallup poll. But it belongs in this picture. The record should not be closed without an allusion to the changing attitude by the people of the South who have been identified with this controversy.

I appreciate what the gentleman had to say about my position, that is, that it is something more than the average position; and yet, I hope I will not appear in the attitude of a courageous martyr to a cause. One of the heartening responses to my proposed compromise on the civil rights controversy—I am speaking now of the proposed compromise on lynching legislation—has been the support that I have received by the thoughtful people of the area chiefly affected. Many who probably have not given much thought to the problem generally, in my State of Arkansas, will support the particular bill which I propose and many might even support stronger measures; I am not sure.

I want us to exert ourselves as much as possible to bring this legislation out of the pressures of sectionalism into the light of skill and judicial science in order to produce a good measure.

Mr. KEATING. Does your bill relate at all to antilynching legislation or is it general?

Mr. HAYS. My bill relates solely to antilynching.

I am taking too much of the committee's time in the preliminary remarks, but I believe the gentleman will agree that it was impossible

to discuss my bill without certain references to the political implications of the things that I propose to do, because traditionally southern Representatives from all of the areas where there is a large minority, the Negro minority, have opposed these measures.

We have had much to sustain us in that effort from outside the South, not only the support of brilliant constitutional lawyers, like Mr. Borah of Idaho, but on the nonlegal side, the larger social issues of whether or not Federal authorities should be projected into these delicate situations, the support of Senator Norris of Nebraska, who said in another situation, and he might not say it today because, as the gentleman from New York pointed out, there is a change in the situation—he said to his fellow Senators on the question of Federal antilynching legislation: "Do not pass this bill; it will waken the sleeping monster that brought on the Civil War," sectional strife and racial hatred. I say that Senator Norris might not say that in the present situation for the very reason I pointed out to Mr. Keating, and the figures he cited might be relevant for that purpose, that there is a change in attitude on the part of southern people. They might welcome certain supports in their effort to put down finally the kind of lawlessness that breaks out and which southern people condemn. They might support certain types of Federal legislation.

They have not regarded it as infringement on State's rights for Federal laws to establish coextensive jurisdiction in the theft of an automobile, they have not objected to the extension of Federal authority into morality standards. They made the traffic in immorality under the Mann Act a Federal crime.

In many instances it is coextensive.

The difference is that in those two offenses with reference to theft and immorality, there are not the aroused emotional and social forces that are involved here. The forces that produced the utterance of Senator Borah—or Senator Norris of Nebraska. But those are substantial things and if you refuse to recognize these social, or shall we say the nonlegal aspects of the problem, we would be working in a vacuum and nothing we might do as technicians working on mechanical operations in criminal law enforcement, would be worth very much. It has to be planted against the thinking of the people.

The reason for that is this, and this again is not partisan: An Attorney General of the United States finding an incident in the South in which there were racial friction resulting in the death of a person, far from the situation, could easily project his authority into it and under some proposed bills, in utter disregard for any good-faith local prosecutions that might be undertaken could very easily turn to those outside the area, assume a righteous attitude, and say, "Look what our administration is doing."

Mr. DENTON. Is that not true of any prosecution of Federal law?

Mr. HAYS. Not so much, sir; not so much because of the interlacing of social relations involved in race matters.

Now, one of our problems is to take those virtues and high principles which produced this Nation, the principles that we in the South identify with Jefferson, and those outside the South have come to admire and perhaps from the very beginning have admired as much as we; because he was a Virginian, we speak of it with some warmth of feeling to transport these simple fundamental principles

of social life and of government from the simple agrarian society that he knew into this complicated and flexible society that we know. It is a changing and dynamic society.

I said, interlacing. It is so interlocked that there is an immediate response in New York to many situations that develop in the South where the races live in proximity. One thing so often unnoticed is that they live day by day in mutual respect. It is only when those lawless fringes in both segments of that society produce an incident that it is dramatized.

I cannot object to the outraged feeling by those that look upon it, though I know that when an incident takes place, it is very logical for the response to be pronounced in other parts of the country.

Now, when we in the South have supported labor legislation, that has not had the support of the regions where industry has developed on a more extensive scale, we have done so because we have an interest in the plants of Mr. Ford and of General Motors in Detroit. I am trying to be fair. I am trying to say that since ours is a national community, and since we must pass judgment upon plant relations and upon industrial policies of industrial cities, our own interests are involved. Cars that might not come off the assembly line as a result of a strike are needed in our part of the country, and we claim an interest in it for that reason if for no other. Likewise, I must grant that the taking of a life by a lynch mob is a matter that concerns the Nation. No matter where it occurs, I cannot complain about that. I repeat, however, that the problem is how best to find solutions.

Mr. Chairman, let me say as forcibly as I can that unless we approach this with some sensibilities, to the feelings of the people who are substantially involved as a result of race frictions we will not produce a good law. I want to see a good antilynching law produced. Here is how I think it can be done. Let the Congress of the United States declare that it is a Federal offense to participate in a mob for the purpose or consequence of taking the life of an individual. I would not even limit it as the chairman would, to say that it must be because he is a member of a racial or religious minority against which there is some outburst of feeling.

Mr. KEATING. Would you not have a constitutional question entering into that? There must be some basis for it to be a Federal crime.

Mr. HAYS. The difficulty is that if you undertake to explore such indefinable factors as the state of mind of the lyncher toward his victim, if it involved race prejudice or religious animosity, you simply cannot produce anything that is judicially significant. If a man's life is taken by a lynch mob, what difference does it make that it was taken because he was a Jew, or a Negro, or a Baptist? It was taken without due process, that the point.

Mr. KEATING. I agree with the principle of what you say, but I am concerned with the preparation of legislation which will not run afoul of constitutional inhibitions and I think that perhaps the suggestion of the chairman of the committee was with that in mind.

Mr. HAYS. I think it would be strange if the Federal authority is to be projected at all into a situation of that kind to buttress the idea of due process of law under the fourteenth amendment or under any other appropriate provision—it would be strange to make the question of prejudice a criterion of jurisdiction. There are much more valid criteria that can be used.

Unless you have other questions, I would be glad to pursue that.

Mr. KEATING. I would be interested in your idea on the basis for your claim that such a broad bill would not run into constitutional difficulties.

Mr. HAYS. What I am getting at is that Federal authority if at all projected should be very narrowly defined, very carefully and cautiously defined and I think it would be unfortunate for the Federal authority to be involved in riots and gang fights. I think you would have it under Mr. Celler's bill if someone were involved in a fray involving race prejudice, one that did not take the life of the person against whom the feeling was directed—Federal authority would be there. And yet Federal authority is not set up for a mob which takes a man's life, a much more serious breach, if no element or religion is involved. Certainly a mans' right to live is more important than his right not to be beaten up. I would eliminate from every Federal statute any consideration short of the taking of a man's life, and any damage to property, I think the Federal Government would be involved unnecesarily in these delicate situations if we failed to so limit jurisdiction.

My bill proposes, however, that there be this criterion: Mob members might not intend to take life; the prosecution might not be able to show that that was their intent; but if it had the consequence of taking life, it would be a mob within the definition of my bill.

Let me get a fresh start. My bill proposes that it be a Federal offense to participate in a lynch mob which has for the purpose or consequence the taking of a person's life.

Now, that is the clear declaration and it establishes Federal jurisdiction subject to this important limitation. It does not extend into any State which gives to the governor or the highest law-enforcement officer of the State the authority and the instruction to exercise that authority to prosecute those against whom evidence might be found as participants in some county other than the one in which the lynching takes place.

The reason you have not had more convictions for lynching is just that, that there is a certain break-down in the processes of law when a mob does its work; if there were not such a break-down there would be no mob and that very condition makes officers somewhat helpless, at least it reduces the power of enforcement authorities to deal with the situation effectually.

I would leave to the State the limits which they would place upon the change of venue but since you would accomplish just as much in this kind of action as you would under a Federal statute, that is by getting it away from the locale where the feelings have been stirred, I would say the State might limit it, the State might determine where the trial would be. But under any circumstances it must be in some other county than the one in which the lynching took place.

Mr. KEATING. You are referring now to H. R. 2182, are you not?

Mr. HAYS. Yes. I have tried to emphasize its positive and constructive aspects, the fact that here is a declaration that the participation in a lynch mob is a crime.

Now, the rest of the bill is directed solely to this question as to how to achieve convictions for those who do breach the law.

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Virginia passed such a law about 20 years ago. Virginia has had not a single lynching. I believe the last incident was in 1926.

Mr. DENTON. You mean, let the State attorney general prosecute them?

Mr. HAYS. Yes, to take over the prosecution.

Now, that would leave——

Mr. KEATING. Do any other States have similar provisions?

Mr. HAYS. Yes, there are some. I am not prepared to say this morning that any State can meet, technically and completely, the criterion of my bill, to be carved out of Federal jurisdiction. What I have hoped is that if Virginia can qualify and I rather believe that Virginia alone could quality, perhaps North Carolina, the other States would quickly follow.

This is the important thing, Mr. Chairman: If the thing that the States most fear, which is Federal intervention, not Federal helpfulness, but unwarranted Federal intervention, became so intolerable, all they would have to do is to pass the kind of statute that is embraced in my bill and immediately they would be free from it, but you would have accomplished something. You would have said, then, to the State: Since you have exalted this idea of State's rights, then exercise it. Since you have insisted upon State sovereignty, then use it. But don't ask the Federal Government not to move into a vacuum that you refuse to occupy.

Mr. KEATING. If the State acted and passed such legislation and left it as a dead letter, would your bill provide the Federal Government could step in?

Mr. HAYS. Yes, and I hope the committee will give that careful study because I think this represents a novel approach to an important problem.

Mr. DENTON. Let me ask you this. I was thinking about it in my State. If the State attorney general moved in on State prosecution, there might be as much resentment about that locally as if the Federal Government took it over.

Mr. HAYS. Would they rather have the Washington authorities deal with the local situation than the State attorney general that they have helped elect?

Mr. DENTON. I have seen this happen. There are certain lines of procedure where the Federal Government acts. They are used to that. As a matter of fact, the local prosecutors work with the United States district attorney on a great many matters where he can work better than they do. But I have thought in my State, and I say that having been a prosecutor, that if the State attorney general tried to move there might be terrible resentment in some cases.

Mr. HAYS. I can only say this in answer to that: It would not apply in the situations with which I am familiar.

Mr. DENTON. There are cases in which they invite him to come in.

Mr. HAYS. Of course, that is something that the committee would want to consider. I think, however, that you would find in most of the States a different feeling would exist.

May I answer Mr. Keating's question?

You see, there will be two kinds of cases. There will be States that have a maximum exercise of authority by the State. That is its purpose. Here is the Federal encouragement to secure maximum

exertions by the State. These two situations then: States exerting themselves by vesting power in their governor or attorney general and States that give no such power, leaving complete decentralization. One says to its governor or attorney general, "You are responsible." That State is free from Federal interference until the Federal Attorney General after a reasonable period says: "Why isn't there a prosecution?" Then my bill provides that there is Federal authority if it can be shown that there has been an unreasonable delay and no good-faith prosecutions where there is a reason to believe that there might have been if due diligence had been shown.

Mr. DENTON. Where would your venue be in this action?

Mr. HAYS. The district court.

Mr. DENTON. If the State attorney general brought it, where would the venue of that action be?

Mr. HAYS. The United States Attorney General?

Mr. DENTON. Where the State attorney general brings it?

Mr. HAYS. That is determined by the State statute; but we only say one thing to limit the State's action; my bill says, it shall not be in the county in which it took place.

Mr. KEATING. In other words, you provide that the action may be removed from a State to a Federal court if it can be shown either (*a*) that the State does not have any such law, or (*b*) that if they have such a law, it is not or has not been enforced.

Mr. HAYS. Exactly. It is shown on page 3 of my bill, H. R. 2182 which was prepared by our legislative counsel, a very skillful job, after conferences with the members of the staff. The exact language is, "the prosecution of the offense against State law"—that is, that there shall be no jurisdiction unless it is shown that the prosecution of the offense against the State law has been impaired by the willful failure or refusal of the attorney general of the State or the governor of the State to exercise his authority with respect to such prosecution; and a sufficient time has elapsed since the offense against section 245 was committed to enable State law-enforcement officers to begin the prosecution of the offense against State law."

Mr. KEATING. That would be a finding which would have to be made by the Federal district judge. Would it be a finding made by him or the State court judge before jurisdiction——

Mr. HAYS. It would be determined by the Federal judge.

Now, those who object to any Federal authority whatever are going to make the most of that provision. They are going to say that there is still that element of discretion. He could come within a week. He could say that that is a reasonable time. That is a risk we should assume. It does hold possibilities for abuse, as every law does.

Mr. KEATING. It could be a year, could it not?

Mr. HAYS. I think the chances are that the Federal attorney general and certainly the district judge, one of their own citizens who will have been confirmed by the Senate, whose two United States Senators from the State in which he sits——

Mr. KEATING. Not unless they vote right, according to the rules I hear about it. They do not participate in patronage unless they vote right.

Mr. HAYS. My understanding is that there will never be confirmation of a United States district judge if either Senator from the State affected objects to the confirmation.

Mr. KEATING. Is that still a rule?

Mr. HAYS. I have known of one or two exceptions; never an exception in which both Senators objected to the confirmation. I think it will be historically accurate to say that never has a district judge been confirmed with both Senators objecting.

Mr. KEATING. I thought they changed the rules recently.

Mr. DENTON. The theory of your bill is that you have the cooperation of these Southern States.

Mr. HAYS. Yes.

Mr. DENTON. In endorsing these rights. Now, you said Virginia was the only State that had the law.

Mr. HAYS. It would be more accurate to say that my approach was first suggested by Virginia's experience. But I did not want to limit myself to Virginia's statute. I wanted to lay it out in a broad policy of the Federal Government and then let Virginia worry about whether she came under it or not.

Mr. DENTON. Is there any case where the State's attorney general has prosecuted a lynching?

Mr. HAYS. No; there have been no lynchings since they gave him authority. That is the point. And, of course, that is what we are trying to achieve. It is not that we want to lay down perfect procedures and get fair trials for lynching. We are trying to discourage the thing to the point of utterly abolishing the evil.

Mr. BYRNE. You believe that can be done locally rather than externally.

Mr. HAYS. Mr. Chairman, no antilynching policy of the Government will ever succeed finally without the support of the people affected.

I would like to say something at that point in response to something that Mr. Celler said. He suggests that in the situations in which lynchings have occurred, there was no evidence of a moral response, that is, that it marked a collapse of moral judgments.

He spoke of the fact that there had been in 10 years 200 attempted lynchings, and he drew, I think, the wrong conclusion from the two points he made. I think the fact that you have frustrated 200 attempts at lynching indicates that the moral judgments of the people have been involved.

Mr. JENNINGS. Mr. Hays, I have had some experience under these provisions of the Federal Constitution and Federal laws with respect to guaranteeing all citizens of this country, both white and colored—and that is the problem we have down South—we have no other racial problem and I would not say that that is as serious as some people think it is, but under the Federal law as it now is, any deprivation of a citizen regardless of his color, of the equal protection of the law, can be punished now by the Federal Government. In other words, we have under title 8 of the Code remedies provided for the prosecution of a sheriff. The last case that I recall that went up to the Supreme Court was the case against a sheriff down in Georgia, with a deputy. He executed a man who had committed a theft. They just beat him to death. They were indicted under the Federal statutes and convicted. But the case was reversed on account of alleged error in the charge of the court.

Now, with respect to the right to vote, if any officer acting under color of a State law or ordinance, usage or custom deprives either a

white man or a colored man of the right to vote and have his vote counted, he cannot only be prosecuted in a criminal case but is subject to suit for damages against the State officers acting under the color of a State law, ordinance, usage, or custom so that the Federal Government long ago moved into this domain with respect to the rights of citizens. I do not think that could be challenged at all under the Constitution, under the Federal Constitution, because cases having gone up from Oklahoma and from Texas where officials holding the Democratic primary refused to permit a Negro to vote, and he sued those parties for damages, depriving them of that right, and the Supreme Court said that he had such a right under the law. So I do not attach any importance to the insistence that under the Constitution Congress has no right to pass for the Federal officers to enforce a law, that is, against lynching wherever it is, whether a white man or a colored man or any other kind of a man; any person. He does not have to be a citizen to have this protection of law. If he is here, a human being, anywhere in this country, under the Constitution. And while the fourteenth amendment was adopted in the first place for the protection of freed slaves, it protects every citizen whether he is white or whether he is black, regardless of his racial origin or whatever his creed might be. They are just people. So I cannot see that there is any force in it. I voted for that antilynching law. That is about the first vote I cast when I came to Congres in 1940, to vote in favor of an antilynching law. Of course, it did not get through the Senate. I do not know whether it will ever get through the Senate or not. I am not a Senator and never expect to be.

Mr. HAYS. I am very grateful to Judge Jennings for that comment. I would like to agree with the distinguished gentleman from Tennessee. I am certainly not prepared to argue on the other side that it is not constitutional, even for the type of approach that the chairman advances. I am not going to argue that point at all.

Judge, you have noticed that I have stressed the policy underlying it.

Mr. JENNINGS. I appreciate your attitude. I think it is a fine approach. I do not think these matters ought to be discussed in any spirit of rancor or antagonism; they are, in a large sense, questions that will be settled by the precepts of the Christian religion and tolerance, mutual confidence and respect, evolution and education, and all those things. I know there are some people who want to have a row about it. I do not see any necessity for a row. But I think the Federal Government has a right to protect the right of a person to vote and to protect that person's right to life and to liberty, wherever he may be.

Mr. JENNINGS. I do not think it ought to go so far that if a man does not hire me as his lawyer he is discriminating against me on account of my politics or origin, and so on. I am not prepared to bring a lawsuit against him who does not want to associate with me socially. I have all the society I can look after. I get along with that all right. I have never lost any sleep over it.

Mr. DENTON. What would you say under your bill if the State made this a misdemeanor? Would that comply with the statute?

You say here, "the act or acts constituting the offense do not also constitute, under the laws of the State, an offense which may be prosecuted by the attorney general of the State or an attorney acting under

his direction or the direction of the governor of the State, and in a local governmental subdivision other than that or those, as the case may be, in which it was committed." Say they just made this a small offense, a misdemeanor.

Mr. HAYS. It would not meet my criterion and if there was any question about it, and my approach appeals to the committee, it ought to be clear that it makes it an offense punishable as other felonies. I think that is the answer, sir. That had not occurred to me because certainly it was in my mind that the State would attach to it the same severity that the Federal Government would.

Mr. DENTON. If they pass the statute, then it would be prosecuted in Federal court.

Mr. HAYS. Unless the conditions in the paragraph I read prevailed.

Mr. JENNINGS. Any violation of Federal statute, if it was made a Federal offense, carries a penalty; that would be in the Federal court.

I brought two suits growing out of the election of 1944 where two brothers, both of whom were in the armed services, one in India, one in Guadalcanal, mailed their ballots in to vote and they were deprived of that right because, as a result of conspiracy between the election officials who were acting under the color of a State statute, and I think also under the color of usage and practice, to deprive the fellow if he did not vote like you do it—just don't put their votes in the ballot box.

There was a motion to dismiss that suit for damages but the court overruled it. When he appealed his case to a higher court, he died. I could not reach his estate.

Mr. HAYS. I infer from Judge Jenning's comment that he does not feel that antilyinching legislation would require these penalties aginst an officer, that there are existing laws.

Mr. JENNINGS. It would not hurt to amplify it. I would have no objection to broadening it because if an officer is charged with the sworn duty of enforcing the law of a State, and he refuses to do it, I think he would still be guilty under these Federal statutes we now have. But I would not have any objection to putting him under another penalty and let him violate another law because I have seen the shocking result, not as against a member of the colored race but as against two members of my race, as a boy. I will never forget the tramp, tramp of 400 or 500 men that walked up the main street of my home town, which was the county seat; got big sledge hammers out of the blacksmith shop and were beating the doors of the jail down. The jailer when he saw that he could do nothing, gave them the keys. They took those two men right to the edge of town where there was a gate, one of these you can drive a wagon through, about 6 feet high and had two posts, upright posts that went at least 6 feet above the top of the gate and had above it a crossbeam on those posts. They just tied their legs together and stood them on the gate, tied the rope over the beam, swung the gate from them and they were there, a gruesome thing. That never faded from my boyish mind. I am opposed to lynching anywhere, anytime.

I had a letter last year when I expressed myself on this committee as in favor of an antilynch law and a good friend of mine who was a well-meaning man and a good man said that he noticed this bill had come out by a certain vote and hoped that I was not one of those who voted for it, and I disabused his mind of whatever hope he had on that subject because I told him I did.

I don't think it would hurt us a bit. Lynching is about dead in the South. I think we have had two last year. Started off with a bad one this year, but it ought to be stopped. Where it happens, as a rule, there can be no conviction before a State jury. A jury in a Federal court is drawn from the Federal district and you get rid of the local influence and local prejudice.

Mr. HAYS. It was to accomplish that same result but under the administration of the governor or State attorney general so that you would take out of this procedure any suspicion——

Mr. JENNINGS. Of the United States?

Mr. HAYS. Under the administration of the governor or the State's attorney general. I would accomplish, in other words, the same result that you have spoken of without involving us in even the suspicion that political pressures from outside the area had had anything to do with the prosecution.

I think there you have that which is so important to good law enforcement, faith of the people themselves that the due process ideal is preferred and the judicial attitude by judge and jury is preserved.

Mr. KEATING. In your bill, Mr. Hays, H. R. 2182, you not only do not include a provision for compensation to the victims of lynching, which you have already discussed, and as to which you have stated your reasons, and which are also not in the Celler bill, but you do not include either the creation of an offense for those who fail to prevent lynchings or apprehend an offender such as is found in most of the other bills.

Mr. HAYS. Primarily for the reasons that Judge Jennings has suggested that existing law includes, I think, about all of the proper pressures that you can apply but if your approach to legislation were adopted, there could be no objection to adding provisions of that character.

If it were carefully stated so that you simply punished an enforcement officer for what was obviously a breach of his duty, and not some incompetence on his part, or some dereliction that does not come under the category of a criminal offense. I think it would have to be very carefully and meticulously stated. But, no, I would not object to an addendum of that kind to my approach.

Here is the thing that will be criticized by some in my bill, and I would like for the committee to think about that. You see, in a State which does not adopt the statute outlined in my bill and a lynching occurs you might have on the part of a diligent local prosecuting attorney a good-faith prosecution that according to standards we would agree on would be better than that of the Attorney General of the United States and yet there is nothing to restrain the Federal authority from moving into that situation and replacing the good-faith prosecution of the local prosecuting attorney.

Mr. JENNINGS. Pardon me. We had a trial of quite a number of men, I believe it was in the capital of South Carolina or one of the large cities, where a man was lynched and they knew the identity of the people who lynched him. The members of the mob were acquitted. They never did find out who killed the colored man in Georgia, and his wife; at least there was no indictment; but there was a trial of the members of the mob that killed the colored man down there not so long ago, and his wife was the only witness who identified the man or the men who did the killing. I do not know whether it was lynch-

ing or not, but it was murder. But they actually made a witness out of the judge and he took the witness stand and testified to the character of the witness. I know that a judge is a competent witness to a material fact in his own court, but I think if I had been the court, I would have told them to get some other character witness.

Mr. HAYS. That would not meet my criterion of a good-faith prosecution. Under my bill the Georgia case would be under Federal jurisdiction. But what I am trying to say is that it is conceivable that there would be good-faith prosecutions in Georgia and consequently it might be suggested that we say by statute to the United States Attorney General, "Don't prosecute in that case." But I came to this conclusion that while you might have isolated good-faith prosecutions and good ones by local people, for each one of them you might have 10 of the other kind you mentioned and you would almost have to make the Federal rule rigid.

If my approach is generally sound, you would just have to say to any State, "Unless you assume State responsibility for putting a stop to this sort of thing, then we are not going to keep the Attorney General of the United States out of that kind of situation, even at the expense now and then of his being thrust into a local situation where the district attorney might be doing a good job.

I think you have got to come to the idea of a rigid and mechanical test as to whether or not a State is getting under the thing so seriously as to put the State government in a place of responsibility.

Mr. BYRNE. Congressman, if you will pardon me. It is now almost 1 o'clock. I would suggest that we recess now and return at 2:30 if that is agreeable to everybody concerned.

Mr. HAYS. Mr. Chairman, if Mr. Keating wants me to come back to answer another question or two about my bill, I should be happy to do it. I am at your command.

Mr. BYRNE. We have not anything to ask you unless Mr. Keating has.

Mr. HAYS. Thank you so much.

I am authorized to say that Mr. Lemke will appear in support of my bill.

Mr. BYRNE. Thank you.

We stand adjourned until 2:30.

(Whereupon, at 1 p. m., a recess was taken until 2:30 p. m., the same day.)

AFTERNOON SESSION

(The committee reconvened at 2:30 p. m.)

Mr. BYRNE. The committee will be in order.

You have finished, Mr. Hays, or do you wish to say something else?

Mr. HAYS. I believe, Mr. Chairman, that I have concluded my remarks.

I do want to thank the committee for its very patient hearing this morning. You were more than courteous to me. You gave me a long period of time to present my arguments and I am indeed grateful to you.

One thing that I would suggest in all of these considerations of civil-rights measures is that basically the problem is not one of judicial procedures or of legal concepts so much as it is an economic and educational problem involving long-range programs and again I should say the movement toward better human relations with all that that implies. I omitted in my principal statement to say that such a bill as I have proposed would have great symbolic value, that whether it resulted in effective prosecutions or not, it would at least symbolize our determination to have every buttress at our disposal for the protection of individual rights and that would have, I think, significance in other parts of the world where the enemies of democracy and of freedom have exploited unfortunate incidents here and have said that the reluctance of the Congress to pass any act at all on the subject of antilynching is due to an indifference to the evil, which we all know is not the case.

Mr. BYRNE. That is correct.

Thank you very much.

We are happy to have with us Mr. Case.

STATEMENT OF HON. CLIFFORD P. CASE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. CASE. Mr. Chairman, it is a privilege to be able to speak to you as chairman of this subcommittee and specially since I enjoyed very much having you a member of the subcommittee of our committee during the Eightieth Congress which considered and recommended an antilynching bill.

In the Eightieth Congress, the Committee on the Judiciary reported favorably on H. R. 5673. The committee report on that bill is No. 1597, the second session of the Eightieth Congress. In that report which I made for the committee, there is discussed the question of the necessity for congressional action, the merits of the bill as meeting the need, the question also of constitutionality.

Because of my knowledge of the realization by the committee and our whole committee of the importance of the problem and the desire to act effectively on it, any because this question of constitutionality and discussion of the merits of the bill has been up before us before, and is discussed in the report to which I refer, I shall not do more than say that I am still heartily in favor of effective Federal action in this field. I believe it is necessary; I believe it is constitutional.

Mr. BYRNE. Is H. R. 155 practcally identical with the bills——

Mr. CASE. H. R. 155, introduced this session, is identical with the bill, H. R. 5673 which the Committee on the Judiciary reported favorably in the Eightieth Congress. That bill, as you will recall, Mr. Chairman, is not quite the same as the bill that I originally introduced in the Eightieth Congress. I remember that because there are several changes. I would like to speak briefly about those changes and also to make a brief comparison between my bill, H. R. 155, and the two other bills, H. R. 4683, introduced by Mr. Celler, and S. 91, which is the one introduced by Mr. Ferguson and which I understand has just been reported by the Committee on the Judiciary of the Senate.

Mr. DENTON. The Celler bill is just like the Ferguson bill?

Mr. CASE. No; all three bills are different. Mr. Celler's bill, H. R. 4683, is identical, as I understand it, with a bill introduced in the Senate by Senator McGrath, S. 1726, but apparently the committee has reported not Senator McGrath's bill but Senator Ferguson's bill, S. 91.

The most significant change made by our committee last year in the bill which I originally introduced and which is reflected in H. R. 155 was the omission of the words "or property" in section 2 of the bill, in two places, appearing on page 2.

If you have the bill before you, you will see that that is the section containing a definition of lynch mob.

Mr. BYRNE. What line was that?

Mr. CASE. On page 2, in line 4, after the word "person" the bill I originally introduced had the words "or property" and the same thing appeared in line 8 on that same page after the word "person."

Our subcommittee reported the bill last year with the words "or property" in there. Those words are in Mr. Celler's bill. They are also in Senator Ferguson's bill. I think they should go back. I left them out because it was my feeling when I introduced this to take what the committee had reported favorably last year as a starter, but on reflection I think it is at least desirable to try to include in the offense violence against property as well as violence against persons because certainly violence has taken both forms in the past and I certainly think we ought to take cognizance of that fact.

Another difference between H. R. 155 and the bill I originally introduced last year is that H. R. 155 omits a rather elaborate preamble in the way of findings of fact and declaration of propositions of constitutional law affording a constitutional basis for Federal action. That was omitted by the committee because of its general position that that sort of material in legislation was not desirable. It was my feeling last year and I still feel that it is so, that in a case of this kind where Federal jurisdiction, as I see it, depends at least in part on the existence of a certain state of facts and there having existed for a long time, it is desirable to have a finding of those facts contained in the law itself. So I would recommend to you gentlemen of the subcommittee that you consider at least the desirability of including some of the basic facts in the way of findings as a preamble to the bill.

Mr. Celler's bill, H. R. 4683, and mine, H. R. 155, are subject—are substantially the same in their definition of "lynch mob" with the exception of the point that I have mentioned. I think Mr. Celler's definition which is contained in his section 4 is better than mine because it includes violence committee on the property of a person as well as physical violence to his person.

Senator Ferguson's bill differs from ours in this respect: We have two tests of a lynch mob: One, the commission of violence upon a person, or in the case of Mr. Celler's bill, his property, because of his race, creed, color, national origin, and so forth; that crime, that is not stated to be a crime in Senator Ferguson's bill—all three bills make it a statement, rather, that a person that is a member of a lynch mob if he exercises or attempts to exercise power of correction, in effect, against a person without authority of law, I think that Mr. Celler's bill in that respect is the most comprehensive and the best of the three.

Mr. Celler's bill and my own are identical also in the question of what constitutes the crime of lynching. It appears in section 3 of my bill and in section 5 of Mr. Celler's bill. In substance, any person who whether or not a member of a lynch mob—

> Any person whether or not a member of a lynch mob who willfully instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, and any member of a lynch mob, shall be guilty of a felony.

Our bills are identical in that respect. Senator Ferguson's bill is not so broad. It is limited in his bill to a member of a lynch mob who conspires with an officer or employee of the United States or of a State who is charged with the duty or who has authority to prevent a lynching or to protect the person lynched. A person has to be one who conspires with a Federal or State officer in order to be guilty of a lynching or he has to be the Federal or State officer who conspires with a member of the mob.

In our bills, that is, Mr. Celler's and my own, any person who willfully incites, instigates, organizes, and so forth, or commits a felony—commits a lynching, or any member of a lynch mob is guilty of that offense. I think in that respect, Mr. Celler's bill and mine which are identical are preferable to the Ferguson bill.

There is a difference in the penalties fixed by the three bills. Senator Ferguson's and my own provide for a penalty of a fine up to $1,000 or imprisonment for up to 20 years or both, in the discretion of the court. Mr. Celler's bill provides for 1 year or $1,000, except that that may be increased to $10,000 or 20 years if the wrongful conduct results in death or maiming or is in effect a felonious taking of property under State law. That is a matter for the committee's discretion, it seems to me.

It seems to me that ours is a simpler way to do it, if the judge does not have to fix any particular penalty. If it is entirely in his discretion, and I should think a single penalty, maximum penalty, would be a simpler way to handle it, leaving it entirely in the judge's discretion.

The bills differ, two of them, that is to say Mr. Celler's and my own are alike in this—they differ from Senator Ferguson's bill in respect to what constitutes a violation of the act by a State officer. Mr. Celler's bill and my own differ as between themselves on that point also. I would like to point out the differences.

My bill provides that whenever a lynching occurs any officer or employee of a State or governmental subdivision who is charged with the duty or who possesses the authority to prevent the lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to prevent the lynching, and any officer or employee of a State or governmental subdivision thereof who shall have had custody of the person or persons lynched and shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all diligent efforts to apprehend, keep in custory, or prosecute the members or any member of the lynching mob, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding 5 years, or by both such fine and imprisonment.

Mr. Celler's bill limits the offense to peace officers of a State or goverernmental subdivision. The limitation, it seems to me is not a desirable one. I think any officer or a State or governmental subdivision of a State, who is charged with the duty to prevent a lynching, or with custody of a person, or the duty to prosecute a lynching, ought to be guilty of the Federal offense and not just the technical police officer.

Mr. DENTON. Would they not all be peace officers?

Mr. CASE. Under the definition in Mr. Celler's bill, the peace officer is this—includes those officers, deputies, and assistants who perform the function of police, sheriff, constable, marshal, jailer, warden—by whatever nomenclature they are designated. It expressly excludes district attorneys, investigating staffs, and so forth, and I think they should not be excluded. It is especially important in respect to the duty or failure to perform the duty of prosecution where I think a lot of this trouble lies.

Senator Ferguson's bill in that respect is somewhat more limited. He includes any officer of a State or governmental subdivision, as my bill does, but instead of having the officer guilty, if he neglects, refuses or willfully fails to make all diligent efforts to prevent a lynching or perform his other functions, it is required for the offense under this bill that the officer shall have willfully failed or refused to make all diligent efforts to perform his duty, and that runs through the various categories of conduct that all the bills contain.

I think that that limitation is not desirable and I commend to your consideration provisions of my bill in this particular respect.

My bill differs from the two other bills in that I do not include a provision making a criminal offense of conduct on the part of Federal officers. That is a question of policy as to which I do not have any firm opinion at the moment. It had seemed to me, however, that for the Federal Government to enforce the performance of duty by its officers, by making failure to perform such duty a crime, is an unusual course of action to take.

Mr. KEATING. Does it appear in other statutes?

Mr. CASE. We have some precedent for it and I do not express a final judgment on it. I question whether it is necessary and therefore whether it is desirable at present.

Mr. KEATING. Is there no such a provision in your bill?

Mr. CASE. There is no such a provision in my bill. The only provision in the bill about Federal action is directory in that it requires the Attorney General whenever complaint of lynching is made to make a thorough investigation. That provision is contained in Senator Ferguson's bill also but is not contained at all in Mr. Celler's bill.

I think that perhaps from the standpoint of appropriateness my bill is better in that respect although I don't regard the matter as a very vital one.

Mr. KEATING. Do you have in your bill a provision for monetary compensation to a victim of a lynching or his family against a subdivision of government?

Mr. CASE. I do, General. And that is a matter I was about to come to in concluding my comparison of the three bills.

My bill provides that every governmental subdivision, or of a State to which the State has delegated police functions, shall be responsible for any lynching occurring within its territorial jurisdiction. It goes on to say that every such governmental subdivision shall also be responsible for any lynchings following upon seizure and abduction of the victim or victims within its territorial jurisdiction regardless of whether such lynching occurs within the jurisdiction or not.

Mr. DENTON. Let me ask you something about that. You have gone into the constitutionality of that. Now, of course, those subdivisions are part of the State. But the Government confers jurisdiction on the citizens through the State. Have you gone into that phase of it?

Mr. CASE. It seemed to me, Mr. Denton, and I am satisfied that the thing is constitutional; that it is a reasonable means of preventing the deprivation by the States.

Mr. DENTON. The Government cannot sue a State under that Eleventh Amendment, isn't it?

Under what theory can the Government confer jurisdiction on the citizen? What part of the Constitution can cover that?

Mr. KEATING. It seems to me it, the statute, creates a liability. That is what the statute is intended to do.

Mr. DENTON. There is plenty of liability that cannot be enforced. These acts provide that you can bring action in the district court; that is what is bothering me. There is a liability. A county does not take care of a bridge. In my State—and in some States it is different—you cannot sue the county because it is part of the State. What I am trying to get at is where you get the authority to get that civil action. That is what bothered me.

Mr. JENNINGS. In my State, we have judicial circuits in the rural sections where the legislature has created a court and that court is clothed with the power and duty to enforce the criminal law of the State.

Mr. DENTON. Civil.

Mr. JENNINGS. They try civil actions, but they have criminal courts, courts of criminal jurisdiction, and when such a circuit is created or such a division, as the case may be, the judge, as the law generally provides, shall be elected to preside over the court in that particular circuit or particular county. The county may constitute a circuit. The office of prosecuting attorney, district attorney, is created and he is, by law, clothed with the duty of preparing indictments, presenting them to the grand jury and then when it comes on for trial and the defendant is arraigned and tried on the indictment that has been ranged against him, it is his duty to appear and prosecute. Of course, ordinarily, the judge and the attorney general are not in custody of a prisoner. The sheriff of the county is the chief law officer of the county in Tennessee charged with the duty of enforcing all laws, and when he has a prisoner in his custody, the effect of this law, as I see it, is to say that in the event a person charged with crime, who is in the custody of the sheriff, that is the way it would be in my State. In the event that that man is mobbed, put to death by a mob, then a right of action on the part of the beneficiaries of that man's estate have a right of action against the county as a subdivision of the State or against the sheriff.

Mr. DENTON. What is bothering me is, what authority has the Government to give that cause of action?

You can only sue a sovereign if they consent.

Mr. JENNINGS. We can sue a county, that is, if it is a debt growing out of a contract.

Mr. KEATING. You mean any citizen cannot bring an action against the county.

Mr. DENTON. That is correct. In commissioner's court I can file a claim, but not for tort.

Mr. JENNINGS. For instance, the county maintains a bridge in dangerous condition or is negligent in the construction of its roads. If it is a governmental function, there is no right of action.

Mr. DENTON. That is so in my State.

Mr. JENNINGS. In a business function like the ordinary citizen for debt, you have a right of action.

Mr. CASE. As I see it, the construction of the matter is this, that the Constitution provides several bases for Federal action. It goes back to this, and what I have to say about the particular question relates directly to this point. One is that because of a pattern of State inaction amounting to condonation, the States themselves involved here have violated the Constitution with the result that lynching is an offense condoned by law by the States.

Congress is given the duty by the Constitution itself to see that the provisions of the Constitution are lived up to by the States. The choice of the remedy is left to Congress. Several cases cited in the report here support that doctrine very clearly. The only test seems to be whether the means chosen are reasonably related to the end of preventing lynching from occurring.

I suggest to you that I believe that no court would say that giving a civil action for damages to the lynched victim or the members of his family if he is killed, against a municipal subdivision having police functions and charged by the State with the duty of preventing that injury to that person or to the deceased, would not be held to be a reasonable method of implementing the Constitutional provision and that that overrides any concept of State sovereign immunity.

Mr. JENNINGS. Would not that be a case of first impression? Do you know of any such case in this country?

Mr. CASE. I am trying to recollect one and I do not think that I have any direct case on that point.

Mr. DENTON. Ex post facto, full faith and credit, and all those things. I never heard of a case where the Government gave a citizen a right to sue a State or a political subdivision of a State.

Mr. CASE. I will be glad to have that checked further. I do not know of any specific instance where this particular method has been chosen but we are dealing in a field where we are, in effect, recognizing a new situation and I can see no possibility of arguing that these meanings are not in fact directed clearly and effectively to the accomplishment of the desired end, and therefore I believe that it would be held to be within the power of the Congress.

Mr. JENNINGS. Now, clearly, we do have acts, Federal acts as set out in the subsections of the various parts of title 8 of the Federal Code, one rating anyone with civil liability who by color of any State statute, ordinance, custom, or usage, violates the civil rights defined in the code, in the Constitution, that would take to implement it with civil liability for the infringement upon the rights, or the violation of the rights of a citizen, not only a citizen but any person in the United States who is under the protection of this law.

Now, those statutes have been upheld in suits against Democratic election commissioners or election officials.

Mr. CASE. Against police officers, too.

Mr. JENNINGS. In Texas and Oklahoma, too, against peace officers, so that you clearly do have a right, Congress has, in my opinion, following that line of legislation, that and the holdings of the Supreme Court, to onerate a sheriff or his deputy—of course, he will be liable for his deputy—with civil liability for failure, willful or negligent failure to perform his duties and undertake to defend and take care of a prisoner in his custody who is in his hands by virtue of a State law.

Mr. CASE. That is quite true, and I do not think Mr. Denton would question that.

Mr. DENTON. By the criminal aspect—I do not differ with that. It is just your legal right to impose this liability on a subdivision of the State——

Mr. CASE. I know of no direct authority on that point. I know no decision against it and I know offhand of none for it. If I can discover any, I will surely see that the committee has it. But I am quite sure that the court would hold that this was a proper means and that, therefore, we all operate, States and subdivisions, within the framework of the Constitution and that any sovereign immunity that might exist in other respects was limited by the right of Congress to take this means of securing to the citizens of the country and the people of the country their constitutional rights.

Mr. KEATING. I might say to the gentleman that I have had a summary review of my bill made with the Legislative Reference Service and I am sure the gentleman will agree that if my bill will stand up against constitutional provisions, it being without any question the strongest one in here, any of the others will and the legislative reference has given it as their opinion that it is within the constitutional limitations.

Mr. CASE. That is true; and true that the Department of Justice, the Attorney General opined last year with respect to bills that were before us including this provision that they were constitutional also. That is also just another lawyer's opinion, of course, and I do not cite it as a decision and binding on anybody.

Mr. JENNINGS. In other words, that is the Federal Government saying to the law-enforcement agencies throughout the country, it behooves you to protect human life and enforce the law of the land and see to it that a man is not executed by a mob.

Mr. CASE. That is right. I point out again that the liability is not given, placed upon any governmental subdivisions to which the State delegated functions of police. That, I think, limits it sufficiently so that the sovereign immunity question is not troublesome. That is a respect in which my bill differs from the Celler bill which has not provision for liability either on the part of the peace officers themselves, that is no civil liability for damages to the victim or his family on the part of the peace officers themselves or of any State or governmental subdivision of it, and I think it is desirable that we have the strongest possible provisions in whatever bill the committee reports in that respect.

Mr. KEATING. Does not the gentleman feel that perhaps that provision for monetary compensation to the victim of a mob or his family against a political subdivision is perhaps the strongest provision in the legislation at all to bring about the prevention and put an end to such lynchings.

Mr. CASE. It is very important, I think, in that respect. It is just a plain matter of common justice, particularly to the families of these lynch victims.

Once a lynching occurs, and fortunately it does not occur very often, but when it does, the families of these people are without any remedy and it is a little satisfaction to them even if the people responsible go to jail unless they can get some way of taking care of themselves and for that humanitarian purpose as well as the very definte effect this provision would have.

Dr. DENTON. Suppose they got this judgment; how would you enforce it, a judgment against a county in Alabama, say? How would you enforce that judgment?

Mr. CASE. There are all the usual ways of enforcing judgments against municipal subdivisions, such as appropriation.

Others are usually available consisting of mandamus actions against the fiscal officers of the subdivision. I think that that is perhaps the orthodox way of actually enforcing such a judgment. Mr. Keating has suggested another which is interesting, novel, and which I believe our subcommitte accepted.

Mr. KEATING. I think the subcommittee accepted it and it was thrown out in the main committee last year, but of course the method that I have suggested is pretty stringent, but to my way of thinking it would absolutely insure the payment of a judgment if you were to say that the mandamus proceeding or any other proceeding does not work, then the amount of this judgment upon certification by the Attorney General will be deducted from any grant-in-aid program that this State is enjoying and furthermore that would have the effect, in my judgment, that the States where these things occur would clamp down on their officials and see that they did not occur when they were actually being penalized by the occurrence.

I do not know what the gentleman's views are, whether we should go that far or not.

Mr. CASE. I favor it. As chairman of the subcommittee, I favored it last year. As the gentleman says, our subcommittee recommended that the full committee adopt it.

Unfortunately, to my mind, that was not accepted. I think it very greatly strengthens the bill and makes simple the collection of any such judgment.

The Ferguson bill on that score gives a right of action for damages to the victim or his family against the individual police officers, but not against he municipal subdivision itself. Perhaps there should be both, but actually I think that the important thing so far as the family itself is concerned, of the man himself, is a judgment against a responsible person and very often the persons financially responsible and the individual police officers might not be able to respond in damages and therefore the remedy would be of no value.

Mr. Cellers' bill and Senator McGrath's do not contain any similar provision.

Those are the main differences between the bills and as I said before, I do not want to take up the time of the committee any further laboring the policy questions, the constitutional question, except as I have done it in this connection on the great desirability, in my opinion, of effective Federal action to meet this point.

It is perfectly true, as Mr. Hays says, that you cannot cure everything by law. But it seems to me that this matter of lynching is one of the things that you can at least have, that you can at least very effectively help by proper Federal legislation.

It is true that almost everywhere people abhor lynching but it still exists and the threat of it, more importantly, exists in big sections of this country. I believe it is long overdue for us to take effective Federal action to deal with this problem.

Thank you very much.

Mr. BYRNE. Thank you very much.

(The following was submitted later by Mr. Case:)

MEMORANDUM BY MR CASE RE LEGALITY OF PROVISION IN ANTILYNCHING LEGISLATION PENALIZING STATE SUBDIVISIONS OR STATE OFFICERS

Constitutional bases supporting the power of Congress to subject States, their subdivisions, or officers to penalties because of the occurrence of a lynching within their jurisdiction are:

A. The fourteenth amendment to the United States Constitution.
B Article IV, section 4, of the United States Constitution.
C. Treaty power and congressional power to define and punish offenses against the law of nations.

THE FOURTEENTH AMENDMENT, GUARANTY OF A REPUBLICAN FORM OF GOVERNMENT

Those clauses of the Constitution which support the type of penal provisions referred to above; namely, placing penalties upon State subdivisions in which a lynching occurs and upon State officers who either participate in such lynching or who fail or neglect to prevent a lynching are the due-process and equal-protection clauses of the fourteenth amendment. Reference to committee hearings and debates at the time of adoption of the fourteenth amendment shows clearly that numerous Members of Congress understood that a State was to be deemed to have violated the equal-protection provision of the amendment whenever inequity resulted from an act of omission as well as commission.[1] This congressional intent has been recognized by leading modern constitutional scholars.[2]

It is not necessary, in order to have a violation of the fourteenth amendment, that there be affirmative action by a State, a subdivision thereof, or its officers. Inaction by a State may be equally violative of the amendment.[3] In that case, the Supreme Court invoked both the due-process and the equal-protection clauses of the fourteenth amendment to hold invalid the attempted withdrawal by the Arizona Legislature of the remedy of injunction in labor-dispute cases.

That the Congress of the United States has power to exercise a reasonable discretion in passing appropriate legislation for the implementation and enforcement of the guaranties contained in the fourteenth amendment is no longer open to question.[4] Section 5 of the amendment specifically grants such power to Congress. "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

The case of *Screws* v. *United States* (325 U. S. 91 (1945)) is complete authority for the constitutionality under the fourteenth amendment of Federal legislation of the type proposed herein as applied to State officials. *The Civil Rights* cases (109 U. S. 3) early recognized that where a State either endorsed, adopted, or enforced the private deprivation of rights, Federal corrective or remedial legislation was authorized by the fourteenth amendment.

ARTICLE IV, SECTION 4, UNITED STATES CONSTITUTION

Article IV, section 4, of the United States Constitution guarantees to each State of the Union "a republican form of government." A lynching substitutes mob action and rule for the safeguards of due process and equal treatment inherent in "a republican form of government," substituting for the constitutional guaranty a rule of terror.

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[1] Congressional Record (42d Cong., 1st sess.), pp. 83–85, 150–154, 251, 375, 475–477, 505–506

[2] Flack, The Adoption of the Fourteenth Amendment, pp. 75–77, 81–85, 90, 232, 237, 239, 242, 245, 246, 247, 277; Swisher, American Constitutional Development in 1943, pp. 329, 334; Baudin, Truth and Fiction About the Fourteenth Amendment, 16 N. Y. University Law Quarterly Review, November 1938, p. 19.

[3] *Truax* v. *Corrigan* (257 U. S. 312 (1921)).

[4] *Texas* v. *White* (74 U. S. (7 Wall.) 700, 729 (1868))

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The affirmative duty placed upon the Federal Government by the constitutional provision [5] requires that Congress insure the reality of a republican government as well as the form

A long line of decisions of our highest Court referring to this constitutional provision have held that "the enforcement of that guaranty, according to the settled doctrine, is for Congress, not the courts." [6]

The powers of Congress under this clause are as broad and discretionary as necessary to make it effective. As stated in the case of *Texas* v. *White*, *supra:*

"In the exercise of the power conferred by the guaranty clause, as in the exercise of every other constitutional power, discretion in the choice of means is necessarily allowed."

THE TREATY POWER AND CONGRESSIONAL POWER TO DEFINE AND PUNISH OFFENSES AGAINST THE LAW OF NATIONS

Article VI, section 2, of the United States Constitution provides that: "all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land." Article I, section 8, clause 10, of the United States Constitution empowers Congress "to define and punish * * * offenses against the law of nations"

The United States Supreme Court has recognized that these two constitutional provisions give to Congress broad powers and discretion to legislate as to matters important to our international affairs.[7]

In August of 1945, the United States signed the United Nations Charter and ratified it as a treaty of our Government.[8]

Article 55, subdivision (c) of this treaty provides that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Following this provision, article 56 of the treaty pledges all members "to take joint and separate action in cooperation with the organization for the achievement of the purpose set forth in article 55." The solemnity of this obligation is specified in article 2, paragraph 2 of the Charter, which provides:

"All members, in order to insure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter."

Clearly here is an adequate constitutional basis either under the power to implement treaties or under the power to define offenses against international law for a statute protecting individuals from violence or denial of their life or liberty, because of race or religion through the placing of penalties upon States, their subdivisions or ther officers where such denials occur.

CONSTITUTIONALITY OF PROVISIONS ENACTED PURSUANT TO CONGRESSIONAL DISCRETIONARY POWER IS CLEAR

That provision in proposed antilynching legislation penalizing the State subdivision (county or borough) in which a lynching occurs is constitutional and finds support in numerous judicial authorties. Such a provision is neither novel nor new in Anglo-American jurisprudence and is familiar to every student of the common law. It was recognized in the very beginning as the police system of Anglo-Saxon people. A very early form of civil subdivision, The Hundred or The Corporate, was held answerable for robberies committed within the division and visited with export liability for murders found within its limits. In a series of statutes dating back as far as 1285 (Statutes of Westminster), one may find a continuous recognition of the principle that a civil subdivision entrusted with specific protective duties may be held answerable not only for negligence but for failure to afford a protection adequate to the obligation. Such laws found their roots in what was once called The Hue and Cry Laws.

Under our system of law, every citizen has certain rights and duties in the prevention of crime. The power of a citizen to arrest for a felony upon view without warrant is one illustration of the inherent police authority and obligation of every citizen. Though these duties and obligations have been in the main delegated to retained State officers, the underying obligation still remains.

These principles were recently applied in an Illinois case.[9] There, a statute imposed upon a county where a lynching occurred a civil liability of $5,000, recoverable by the victim's heirs. In upholding its validity, the supreme court of the State said:

"It is, we think, too clear for argument that those provisions of said act which provide that persons engaging in mob violence shall be guilty of a felony and subject to imprisonment in the penitentiary will tend to prevent men from joining mobs when assembling and will tend to the suppression of mob violence, and it is, we think, equally clear that the imposing of a liability for damages upon the county or city in favor of the victim of a mob whenever mobs are permitted to assemble, or, in the case of his death, in favor of his widow or heirs or adopted children, will cause the taxpayers of such county or city to discourage the assembling of mobs within such municipalities and will cause all law-abiding men residing in such communities to condemn and denounce mob violence, the result of which must be to create respect for the law and its enforcement and to discourage the assembling of mobs."

In the case of *Brown* v. *Orangeburg County* (32 S. E. 765, 55 S. C. 45), the court construed the constitutionality of a State statute making a county liable for damages in cases of lynching. In holding the statute constitutional, the court said:

"Statutes making a community liable for damages in cases of lynching, and giving the right of recovery to the * * * representatives of the person lynched, are valid on the ground that the main purpose is to impose a penalty on the community, which is given to the legal representatives, not because they have been damaged but because the legislature sees fit thus to dispose of the penalty."

Congress, in fulfilling its obligations to secure a Republican form of government and protect the guaranties contained in the fourteenth amendment, can likewise hold subdivisions liable where a lynching occurs.

The theory which supports such a provision is that State subdivisions, in their corporate capacities, acting by and through its peace officers, violate the fourteenth amendment through the inaction or negligence of its officers. Thus, the fundamental rule of representation so commonly applied in corporate law; e. g., where stockholders of a private corporation have no knowledge of a tort committed by a corporate officer and no opportunity to prevent it are still subject to responsibility.

Such a provision does not come into fatal conflict with the eleventh amendment to the United States Constitution. The Supreme Court many years ago held that this amendment is no barrier to suit against a governmental subdivision which must come into court and submit its defense. In the case of *County of Lincoln* v. *Luning* (133 U. S. 529 (1890)), the Court, through Mr. Justice Brewer, disposed of this problem in stating:

"* * * first, it is claimed that because the county is an integral part of the State it could not, under the Eleventh Amendment of the Federal Constitution, be sued in the circuit court * * *.

"With regard to the first objection, it may be observed that the records of this court for the last thirty years are full of suits against counties, and it would seem as though by general consent the jurisdiction of the Federal Courts in such suits had been established. But irrespective of this acquiescence, the jurisdiction of the Circuit Courts is beyond question. The Eleventh Amendment limits the jurisdiction only as to suits against a State * * *.

"* * * and while the county is territorially a part of the State, yet politically it is also a corporate created by and with such powers as are given to it by the State. In this respect it is a part of the State only in that remote sense in which any city, town, or other municipal corporation may be said to be a part of a State" (p. 530).

STATEMENT OF HON. WILLIAM LEMKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA

Mr. LEMKE. Mr. Chairman and members of the committee, I introduced H. R. 3553 which is identical with H. R. 2182, the Hays bill.

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[5] Art. IV, sec. 4, United States Constitution: "* * * the United States *shall* guarantee to every State in this Union a republican form of government." (Italics ours)

[6] *Highland Farms Dairy* v. *Agnew* (300 U. S. 608, 612 (1937)); Accord: *Luther* v. *Borden* (48 U. S. (7 How.) 1 (1849)); *Texas* v. *White* (74 U. S. (7 Wall.) 700 (1879)), *Taylor and Marshall* v. *Beckham* (178 U. S. 548 (1900)); *Pacific Telephone Co.* v. *Oregon* (223 U. S. 118 (1912)), *Ohio* v. *Akron Park District* (281 U. S. 74 (1930)).

[7] *Missouri* v. *Holland* (252 U. S. 416 (1920)).

[8] 59 Stat. 1031

[9] *People* v. *Nellin* (249 Ill. 12).

The evil that we are trying to remedy here, or at least to mitigate, is not sectional; nor does it depend or have its source in color, race, or religious prejudice. It is usually followed where an atrocious crime, but not in all cases, has been committed.

I remember that when I was about 3½ years of age, a lynching took place in my own State. I also recall that there have been a number of others since and I do not recall of a single prosecution or conviction.

Mr. BYRNE. What State was that when you were a boy?

Mr. LEMKE. North Dakota.

I realize some lynchings have taken place there quite recently, at least one, and that is where a very atrocious crime was committed. It is mob psychology.

I also realize that in these bills we make a distinction between riots and lynchings. To me it is hard to see the difference except that lynchings generally take place in smaller communities and sparsely settled communities and riots in the larger cities. They are both equally wrong and should be blotted out, if it is possible to do so.

I realize, however, that a mob is insane for the time being and you cannot legislate sanity into a mob when it once becomes a mob. We might just as well face the facts in reality as they exist. Therefore, I am in favor of the Hays bill because I think it will give us a toehold. I have drafted a number of laws, not only for the States, but a number that have passed the Congress of the United States and I find that a little later on there is some improvement to be made. Now, no law that you can and I can pass is perfect. We can aim for perfection but we never arrive at it. Therefore, I feel, let's get a toehold.

I voted for antilynching bills ever since I have been in Congress and we never get it. I think the Hays bill has the best opportunity of being passed and if passed will be signed by the President, and I am equally satisfied that later on, if it does not accomplish or bring about the desired results, we can go a step further.

However, I do feel at present we ought to do something. We ought to do something that we can accomplish during this session of Congress.

I will state frankly that perhaps the Hays bill does not go as far as some of us would like to have it go. But I also know that many of the arguments against the more stringent bills will be removed and as far as constitutionality is concerned, the Constitution's ribs have been cracked so many times, and after all it depends on what the Supreme Court says is constitutional. It has at times disagreed with my own opinion of what is constitutional, but in the words of Justice Brandeis, an erroneous decision of the Supreme Court is never constitutional if it is in violation of the supreme law of the land, and he says it is the lawyers' business to keep on testing its constitutionality until finally the Supreme Court's opinion squares itself with the supreme law of the land, the Constitution.

So the Constitution is a living thing; it grows and sometimes may recede, depending upon the American people and the courts of this Nation.

So, as far as constitutionality, I am sure there are less objections, if there are any objections toward any of them on the Hays bill, than on some of the others. But I do feel that that bill comes closer to meeting perhaps with a great deal of the opposition which might make it impossible of getting some of the others passed.

What is the use of us sitting here continually having petitions up at the Speaker's desk and so forth on anti-lynching bills, even if we pass it by the House—should be able to pass it—it is blocked on the other side.

I am not criticizing. I, too, am proud of the rights of my State and I, too, do not want to have any more interference with those rights than is necessary to accomplish our purpose.

We are here to accomplish a purpose, stop lynching as far as it is possible, but I think we realize we cannot blot it out at once and I also realize that these riots have taken far more lives than have lynchings.

If you had asked me for a constitutional question, I might question the right of fining by the Federal Government a State official for not having done his duty under the State laws.

However, I am inclined to believe that it would be held to be constitutional. But you come mighty close to a line there. It is all right if you can connect him up with a crime or a conspiracy, but if you want to fine him because he slept too much that night or forgot to be at his post of duty or be where he ought to be, and you are fining him because he is a State official, I have some doubts as to whether that does not come very close to being unconstitutional; but if he has participated in it, that makes a different question.

I am willing to concede and I am firmly convinced that the Government of the United States can protect its citizens against those who would injure them but whether it can protect them or fine a State official—again I favor the Hays bill because I think convictions will be easier. It does not fine a community or a whole group of people. It fines those and imprisons those who are directly responsible. It is harder to get a jury to convict a whole community, where they may have relatives even though they are selected from the whole State, than to punish the individual who commits the crime.

I am just giving my opinion on that subject. Therefore, in conclusion, I am wholeheartedly for the passage of the Hays bill, H. R. 2182. The one I introduced is simply an identical copy simply in order to carry out my own conviction that some legislation ought to be passed during this session of Congress and it should not only get through the House, it should also get through the Senate.

I thank the committee very much for its attention.

Mr. BYRNE. Thank you, Congressman.

Now, is there anyone else here that wants to be heard on this particular matter?

If there is none, we will adjourn until the call of the Chair.

(Whereupon, at 3:45 p. m., the committee adjourned subject to reconvening at the call of the Chair.)

ANTILYNCHING AND PROTECTION OF CIVIL RIGHTS

WEDNESDAY, JUNE 15, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE NO. 3,
Washington, D. C.

Met, at 10:30 a. m., Hon. William T. Byrne, chairman of the subcommittee, presiding.

Mr. BYRNE. Gentlemen, we have been a little bit delayed this morning, as you will observe, but we are ready now to proceed with these bills under previous discussion.

We will be very happy to hear the Attorney General and others who may wish to give us their point of view on these civil rights bills.

General, would you like to proceed first?

Attorney General CLARK. If it is agreeable to the committee.

Mr. BYRNE. We will be glad to have you.

STATEMENT OF HON. TOM C. CLARK, ATTORNEY GENERAL

Attorney General CLARK. It is always good to be before the Judiciary Committee of the House and particularly pleasing to be here on a subject that is so important, I believe, to our country.

Mr. BYRNE. You may be seated if you wish.

Attorney General CLARK. Thank you.

This bill that we were going to discuss with the committee today is H. R. 4682, known as the omnibus bill involving some of the recommendations that were made by the Civil Rights Committee that was headed by my friend who is here today, Mr. Charles Wilson, and some other distinguished Americans, and was later transmitted to the Congress by the President.

This bill could, you might say, be divided into four parts. The first provision of the bill is the creation of a five-member commission. It is known as the Commission on Civil Rights. These members would be charged with the duty of studying the problem incident to civil rights through finding out facts concerning the over-all problem throughout the United States, compiling data, making research of caes that have occurred in the past, possibly acting as a clearinghouse where some case occurred in some State.

Perhaps they would like to contact this Commission and let them clear some of the State action as well as the Federal action. But I think the main thing would be to act somewhat by way of education. By that I mean that this Commission, from time to time, would possibly make reports to the President and to the Congress and in that way

bring to the attention of the American people: first, the progress that we have made. We have made tremendous progress in this field.

Second would be the current problem.

Third, perhaps they would point out some of the current cases implementing the document by showing some of the incidents that have occurred and perhaps making some suggestions.

This commission does not have, you might say, any power. They cannot force anyone to appear. They have no subpena powers, as it is proposed in this act. It would be merely a sounding board, a place where one might go and state his case if he wanted to. This commission could look into various problems incident to the over-all picture in civil rights.

In the past I think Congress has had a number of commissions. I noticed in the press this morning where the Hoover Commission wound up its work just a few days ago. That was a commission along this same line except it was along, as you well know, the line of reorganization of the Government.

When you created the Council of Economic Advisors that advises the President, you also created the National Security Resources Board that acts in an advisory capacity and makes studies and carries on research in the field of our national resources. There is plenty of precedent for this type of operation.

The second thing the bill does is create a joint committee of the Congress. I think the suggestion made by the commission, of which Mr. Wilson was the chairman, was that this continuing committee, somewhat like the Atomic Energy Committee, which is a joint committee of the Congress in the field of atomic energy, that this committee would function in the field of civil rights. That does not mean they would take away from other and standing committees of the Congress the right to pass on legislation that through the years has been assigned to standing committee.

This joint committee would be what you might call a watchdog. They could also carry on studies that perhaps a standing committee would not be in a position to carry on.

This joint committee of the Congress does have the right of subpena. I think the personnel of it would be seven from each House, seven appointed by the Speaker and seven appointed by the President of the Senate. This joint committee could do a very fine job in this field, I think. They could make a continuing study of legislation while the citizens' committee would make a study and correlate and collect facts with reference to what is going on in the field while the joint committee might make a study from a legislative standpoint with the view of sometimes strengthening a law here or perhaps passing some new law with reference to this problem.

The third thing in the bill is the creation of a civil rights division in the Department of Justice and the authorization of the appointment of an assistant attorney general. As you well know, assistant attorneys general are appointed under authority only of the Congress. At the present time we have an Assistant Attorney General in charge of the Criminal Division. The Criminal Division of the Department handles some 50,000 cases a year at this time. During the war there were many more than that on account of the Selective Service Act. A portion of this division is what is known as the

civil rights section. It is a small section. On the average during the 10 years since the creation of this section by Attorney General Murphy in 1939, the average personnel of lawyers in the section has been seven to eight. At the present time there are seven. There are three stenographers. This section handles a tremendous amount of work.

I remember when I was the head of the Criminal Division. Mr. Schweinhaut, who is presently a justice in the District of Columbia, was the head of the civil-rights section of the Criminal Division.

The civil-rights section also handles the wage-and-hour law. The Fair Labor Standards Act, I think, is the correct title. It also handles the Safety Appliance Act. That is with reference to safety appliances on railroads. It also handles what is commonly known as the "kickback statute." That is with reference to labor.

I think we have had some prosecutions up in the chairman's country 2 or 3 years ago where someone is required to kick back a portion of his salary in order to get a job. That is handled by this section. The violations of the Hatch Act are handled by this section. Most prosecutions of this section, I expect, have been in the Hatch Act field.

To give you a little thumbnail sketch of what goes through that section, in 1944 they had about 20,000 complaints in the civil-rights and Hatch Act field. You will find from this little statistical presentation that I have that in the election years there are more complaints, which shows, I think, that quite a number of these complaints are Hatch Act violations. In 1945, for example, the complaints dropped down to 4,421. That was down from 20,000. There were 64 prosecutions in 1944. Some of those, of course, did not arise out of the 20,000 complaints. Sometimes it takes us 6 or 8 months and sometimes a year to investigate a complaint sufficiently to where we have evidence to go into court.

In 1945 without the complaints then on file there were 32 prosecutions. In 1946 complaints jumped to 7,229. In that year there were 15 prosecutions. These prosecutions are prosecutions under the civil-rights statutes only. They do not include Hatch Act violations. In the group of sailor cases in Kentucky I think there were 99 cases that we prosecuted in that one county. That was in about 1944. This would not include those. These cases include only the civil rights.

In 1947 the complaints jumped to 13,000. That is an off-year, as far as elections are concerned. There were only 12 prosecutions that year, however, in the civil-rights field.

In 1948 complaints were a little over 14,000. There were 20 prosecutions in 1948. We estimate this year complaints will run about the same as last year. I think the economic conditions have something to do with the complaints. We know that when times are hard we have found that complaints run higher.

On the average, during the 10 years of the existence of the section, I would say 10,000 complaints a year would be a fair average. There were about a hundred thousand complaints during that 10 years.

In addition to processing these complaints and requesting the FBI to investigate those that seemed to have some substance, and also appraising the investigative reports, handling the prosecutions through the United States attorneys, usually, this section also handled some of the briefing.

For example, in the restrictive covenant cases that we intervened in in the Supreme Court, that section briefed that case insofar as the Government's brief was concerned. That is a celebrated case in the civil rights field. The section is kept very busy. In fact, the boys really need additional help. I think the idea of creating a division is being put forward with the view of perhaps placing these prosecutions on a little higher level, giving a little more dignity to the division by having an assistant attorney general at the head of it. It would possibly have more attention. They would have more than the seven lawyers they have now in there with a division.

The cost of creating the division would depend on the number of lawyers you placed in it. The cost of making the section chief an assistant attorney general would be negligible. However, if you increased the division to the size that possibly would be commensurate with the number of complaints and the importance of the legislation and the prosecution, you ought to have perhaps as many as 50 lawyers in the section, which would be about seven times as large as it is now.

That would cost approximately $6,500 to $7,000. That would be a total of about $50,000.

Mr. KEATING. Was that part of the recommendations of the commission, the creation of this new division?

Attorney General CLARK. Yes, sir; and that is part of this bill, too, sir.

The commission recommended that very strongly. They came into the department through some of their executive help and went through most of the files with reference to prosecutions and with reference to these complaints. In that way they got a very fine picture of the operation of this section in the department.

The fourth division of this proposed act is with reference to an amendement to existing law. One section is a new section altogether. I thought if you would turn to page 10 of the committee print I could point out to you just what some of the changes are. In that way we will be able to follow it a little better, I think.

It is our position that the Congress has the authority to enlarge in this field and to set out more definitely just what an offense is, as well as to make certain that the protection and provisions of the Constitution with reference to this field are carried out by legislative acts. It has been contended that the Constitution itself is sufficient, and that the amendments, particularly the thirteenth amendment, were self-executing. But Congress has seen fit, and the courts have upheld its action, to implement these amendments by the passage of such acts as the Congress felt were necessary in the public interest in order to see to it that the provisions of the Constitution were properly applied.

In doing that, the Congress passed, in 1870, I believe it was, a very comprehensive act. Since that time I would say it has been whittled down either by decisions of the courts or by direct repeal by the Congress itself, to just a handful of acts. Insofar as civil rights are concerned, you might say there are just three or four. The old sections 51 and 52 and section 241, which is the same as section 51, have to do with any persons that conspire to injure or oppress or take away any of the federally secured rights of any other person.

It has been held that the word "citizen" that is presently in section 241 does not include an inhabitant who is an alien. That is an old

case that I think was decided in 1887, Baldwin against Franks. We thought that ought to be changed.

In section 242 it does include inhabitants. We had suggested in this bill that the word "citizen" be stricken out and in lieu thereof the words beginning on line 17 "inhabitant of any State, Territory, or District" be substituted. That is in order to enlarge the statute so it would include any person rather than just a citizen.

We thought it a little strange that the Congress creates an offense here where two or more people get together and conspire to do these things but it does not make it an offense for a individual to do so.

Section B on page 11 is a new section. That merely extends the same penalties to individual action.

Section A that we were just speaking about is with reference to conspiracy of two or more people while B is limited to individual action so if any one person commits the offense he is guilty.

The Commission had suggested that the penalties in some instances were very small. These sections are what we call misdemeanor statutes. The penalty is a year and $1,000 fine. In some cases it is very meager. For example, in the Screws case where a sheriff was alleged to have tied a boy to a car and dragged him for several miles, the idea is ridiculous of the maximum penalty for an offense like that, resulting in death by the way, being so low.

Mr. JENNINGS. That is where the sheriff killed his prisoner?

Attorney General CLARK. Yes, sir; he died in jail later. The Supreme Court reversed the case, holding that the court erred in not instructing the jury that they had to find that at the time Screws, the sheriff, was committing this offense, that he had the intent to deprive the victim of a federally secured right, which is quite a burden for any prosecutor to prove and quite a burden for a jury to find. On the retrial of the case Screws came clear. He was not prosecuted in the State courts.

We have another problem which is the Crews case. That is a Florida case. He was beaten up by an officer and became unconscious and was thrown over a bridge into a river and he drowned.

Mr. CELLER. I think he forced the Negro to jump into the river.

Attorney General CLARK. In that case, the penalties were very small and there was no prosecution on the State's part. We have provided that where death or maiming results the penalty should be increased to $10,000 or 20 years or both. That certainly makes it commensurate with the offense. If it does not result in death or maiming the same penalties that are presently in the law would apply.

Section C on page 11 is a new section. Section C is an attempt to give a person a civil remedy where his rights have been violated under section 241A or B. Presently a person can bring a suit for damages for the injury that he suffered. That is all he can do. This section would also give him the right to proceed by injunction or by securing a declaratory judgment. That would be particularly good in these personal-injury cases where someone has a feud on and perhaps you could get an injunction against being bothered. Sometimes they do that in divorce cases. In that way you might have a little ounce of prevention.

Also in voting cases you might be able to get an injunction where you had notice or information that one or more people were conspiring to deprive you of a proper count of your ballot. That is the

provision of C. That also extends to the Attorney General the right to do that and it extends the right to any State or Federal court, regardless of the amount in controversy.

Mr. JENNINGS. I think that is a good provision. We had down in my State in a primary a case where a combination is tantamount to election. The man in charge of the election machinery, a member of my party, openly boasted that he meant to cut my colleague's head off. That is Phillips, a Representative in Congress from the First District. He referred to him in terms that are too vile to be repeated and he suited his action to his words. He deprived him of any representation whatever on the primary votes in the entire congressional district. When he was reminded that that was in violation of the law, he said, "Damn the law; it is good politics." I am heartily in favor of this provision.

Attorney General CLARK. I think, too, it would help us in enforcement. It is somewhat like the triple-damage provision of the antitrust laws.

Mr. JENNINGS. In other words, you are locking the stable door before the horses are stolen, before the ballot boxes are stuffed, and before somebody is killed?

Attorney General CLARK. This private action would be very helpful from an enforcement standpoint.

Mr. KEATING. General, you say that an action for money damages is now permissible. It is not spelled out in the law, is it?

Attorney General CLARK. It is in section 47, title 8.

Mr. KEATING. It is not what we are here considering now.

Attorney General CLARK. No; it is section 47, title 8, a different act altogether. It is on the books, though.

Mr. KEATING. Does that permit only against the official or against the governmental subdivision?

Attorney General CLARK. Against anyone taking part.

Mr. JENNINGS. It is against anyone acting under color of a State statute, ordinance, custom, or usage?

Attorney General CLARK. That statute, Mr. Congressman, is not with reference to law.

Mr. JENNINGS. I see what you are talking about now. I heartily favor it.

Attorney General CLARK. Anybody that would be in a mob would be subject to a suit for damages. Of course, you would have to prove he was in the mob.

Mr. JENNINGS. I brought two suits under that title 8, but I never could get anything done until the man who had the money died. After that I would have been chasing a jay bird.

Mr. DENTON. I do not understand that. Does the Attorney General bring suit?

Attorney General CLARK. Under section 215, but not in the section for damages or injunctive relief on 241.

In section 242, page 12, one acting under color of law comes under the criminal provisions. This is in the proposed bill. Anyone who acts under color of law and commits these offenses is guilty of offense. That means where an officer, we will say a sheriff or any officer, uses his office to try to deprive someone of a federally secured right. This applies presently to any inhabitants, you will notice, while the preceding section as presently written only applies to a citizen. That is why we are trying to conform these two sections.

Also you will notice that the penalty in this section, in the event of maiming or death, is made the same as in the preceding section. At the present time the penalty is much less, $1,000 or 1 year.

We are attempting in section 203 to point out some of the rights. This does not mean that this is all of them, but just some of the rights that Congress intends to be protected under this statute. There is quite a controversy in the courts and outside as to just what a federally secured right is. This spells out six of the rights. That is more or less declaratory of cases that have already been decided by the courts.

Mr. CELLER. They are not new rights, they are just action upheld by the courts?

Attorney General CLARK. Not at all, Mr. Chairman.

Mr. JENNINGS. Mr. Attorney General, what do you think about extending that protection to a voter in any election, regardless of whether or not it is a Federal election? It seems to me there is a right of a citizen to vote.

Attorney General CLARK. That is exactly what we are trying to do here, Mr. Congressman.

Mr. JENNINGS. The right of a citizen to vote in a State election is just as sacred as the right to vote in a Federal election. It seems to me that the protection of all the State and Federal Government laws should be incorporated.

Attorney General CLARK. We extend it that way. We will come to that in a few moments, sir.

On page 23 we set out some of the cases to indicate that we did not pull these things out of thin air. We took them out of decided cases. No. 1, on page 13 of the bill, the right to be immune from exaction of fines without due process of law is a right that has been determined in court. We are just spelling it out in the act to make it clear. The idea is, if these specific things that were in the law, an officer could be charged with notice of that. It might not be as great a burden for us under the rule in the Screws case where you have to prove that he intended at the time to deprive the victim of a federally secured right.

Mr. JENNINGS. I understand that to be the law, but why not spell it out, that a man is deemed to intend the necessary or probable consequences of his act? If he forces a man to jump off a bridge into water over his head after knocking him on the head it would indicate that he meant to drown him.

Attorney General CLARK. We are trying to spell out here what these rights are so that if an officer commits one of these offenses he would be on notice that that offense is a federally secured right. We would not have such a heavy burden as is pointed out in the Screws case with reference to proof of intent.

Section 242 provides that the act has to be performed wilfully while in 241, the one he just talked about with reference to private

Section 242 provides that the act has to be performed willfully in it. That is why we are spelling out these six things with reference to 242. It is because of the burden that is on us to prove that the act was willfully done.

Mr. JENNINGS. I can understand how under certain circumstances you could get 12 men who would go in with a preconceived intention

of liberating the accused. No law in the world would operate under those circumstances. You have got to get the right sort of jurors.

Attorney General CLARK. We had a conviction blow in the Screws case.

Mr. JENNINGS. I know you did in the first case, but in the second trial I understood he came clear.

Attorney General CLARK. We have not had much luck on mob violence. Of course, the Screws case was an individual, under color of his sheriff's office. I am speaking now of where 50 people, we will say, break into a jail and take a prisoner out. We have not had much success in our prosecutions. In fact, we have lost practically all of that type.

Mr. JENNINGS. The trouble is, you have to try the cases where they committed the crime. There ought to be a change of venue or there ought to be a provision to bring in jurors from some other part of the State.

Attorney General CLARK. I think this civil provision will help us considerably in that respect. I think a jury would pass much more quickly on a civil remedy than on a criminal remedy. I think there that would be very helpful to us. I think you will agree with me, sir, that we have made considerable progress and I think if we go along with these civil remedies and also vigorously prosecute where a criminal action is warranted we will overcome these problems fairly quickly.

Mr. KEATING. General, I am very interested in hearing what you say about this civil remedy. It is possible you are going to deal with antilynching legislation after you get through with H. R. 4682. If you are, I will defer my remarks until that time, but I feel it is very important in that respect to have civil remedy given to the victim or the family of the victim.

Attorney General CLARK. I was not going to discuss it this morning.

Mr. KEATING. You were not going to?

Attorney General CLARK. No, sir.

Mr. KEATING. Then if I may just ask you a question or two, I will bear on that point. In an antilynching bill which I have introduced there is a provision which is unique insofar as the other bills are concerned and which gives to a victim or his family a civil remedy and allows him to be awarded not less than $2,000 or not more than $10,000. My bill provides that if a judgment is awarded and is not collected, it may be paid out of the Federal Treasury and charged back, upon proper certification by the Attorney General, against the State where the violation occurred under any grant-in-aid program. I would be interested to get your view as to whether you think well of inserting such a provision in any antilynching legislation which we might report favorably.

Attorney General CLARK. I have not had an opportunity to study your bill, sir. I have a copy here.

Mr. CELLER. Before you answer, Mr. Attorney General, I do not mean to forestall any answer, but I would like to state this: I have offered a companion bill to this civil-rights bill, a companion to H. R. 4682, and the antilynching bill I offered is H. R. 3685. I deliberately omitted from that antilynching bill any opportunity given to anyone to bring any action against anybody other than the one actually guilty

on the ground that I felt that guilt is personal. It would be very unfair, as it always has been unfair in our jurisprudence, to visit the guilt of a few upon the many who may be innocent.

Therefore, a number of the antilynching bills that have been heretofore introduced provided that the county or the municipality would have to suffer for the sins of the malefactors who may be few in number. I felt that should not be the case. I thought it might be well for you to know that there is a little different division of opinion in this committee on that matter.

Mr. KEATING. I have no power to lead the witness and I will not present my views on that at this time, but I was inquiring what the views of the Attorney General were.

Attorney General CLARK. I certainly think a civil remedy would be most helpful. As to whether or not you ought to visit it against a governmental section such as a city or county is another problem altogether. I think where you do visit it upon innocent people—and I would say the overwhelming number of people in the areas in which we have these problems, or where they are most acute, are people who are very much opposed to such activity—it creates an unfair situation.

Mr. JENNINGS. I do not think there is any doubt about that.

Attorney General CLARK. But you have a few little people whose blood boils so in hot weather. That is not jokingly said. We found during the war hot weather had a good deal to do with it. In the summer these things seemed to occur more than they did in the winter. I think where you would visit upon a whole community the wrongful action of just a handful of people, it is a pretty serious thing.

Mr. KEATING. The sheriff or the law-enforcement officer who allows the thing to happen is an officer of the county and is acting in an official capacity. My feeling was that such a provision would perhaps have even greater effect than the criminal penalty in putting a stop to the thing. That is what we are all seeking to accomplish rather than to put anyone in jail. We want to stop this thing. It seems to me that perhaps such a provision would be the most effective weapon that we could use in trying to stop the incidence of these offenses.

Attorney General CLARK. I will be glad to give it more detailed study, sir, and give you my views in detail. My thinking out loud is along the line I have just indicated.

Mr. JENNINGS. The trouble with that remedy is that you run into Burks' statement that you cannot indict a State and you probably could not hold a State liable for the acts of its citizens.

Mr. DENTON. On that same line, do you think the Government has the power to sue a subdivision of the State? You cannot sue a sovereign and the county in a good many States is considered a subdivision of the State.

Attorney General CLARK. In my State you would not be able to sue the State without its permission so I doubt if the Federal Government could give that permission. However, of course, they can visit some reprisal. They can say, "We will not give you aid in certain respects" or things like that if they wish to. In that way you could bring it about through the back door.

Mr. DENTON. You would have to have some law to determine liability before you could answer that question.

Attorney General CLARK. That is right. If the State had the choice of continuing its participation in certain Federal activities or giving consent, they would probably give the consent. I think it would be pretty serious to do a thing like that. In counties I think it would be different. In many counties I do not think you would have to consent to sue them.

Mr. FORD. In connection with the antilynching bill, we will file a statement this afternoon with the committee, sometime this afternoon. That is the bill that is presently before the committee.

Attorney General CLARK. It is a bill that was suggested by the same commission, of which Mr. Wilson is the chairman.

Mr. JENNINGS. Mr. Attorney General, what would you think of the propriety of including within or adding a section to follow section 594 containing a provision making it a felony or an offense against the Government for any person or persons to conspire? I think it ought to be aimed at individuals and those who conspire to violate any election governing primary or special elections in which a Member of Congress is voted for.

Attorney General CLARK. This does that on line 21, page 14. It says, "At any general, special, or primary election."

Mr. JENNINGS. I did not know whether the preliminary, the first part of that section, would reach those elections. I have in mind things that I have seen happen. While nobody has yet tried to do those things to me, I have seen them do those things to others. I would like to have not only the benefit of State laws to stop it, but the Federal law to stop it. In other words, let that language be broadened so that any act designed not only to prevent the voter from voting but to deprive him of his vote after it may have been cast would be subject to this law. Those things are done sometimes.

Attorney General CLARK. We have cases that hold we have that authority now. Let us take the Saylor case. This is a case we call dilution. That is ballot stuffing.

Mr. JENNINGS. "The fear o' hel's a hangman's whys to haud the wretch in order," and if you just have it staring him in the face he is a coward to start with and it scares him.

Attorney General CLARK. Of course, these cases do spell it out. There is the Saylor case and the Smith-Albright case and there are other cases that are very clear. There are three fields in which the Federal Government, under this statute, has been able to extend the law through final decisions with reference to elections. That is the right of a person to cast a ballot, the right of a person to have his ballot counted after he casts it and as it is cast, which is the problem you just raised, and the right to have his ballot counted along with other ballots that are honest ballots, without having his vote diluted by the casting or the stuffing of the ballot box.

Mr. JENNINGS. I tried a case, Mr. Attorney General, in November of this year following an election in one of the big districts in one of my counties where the officer put all the people who could see him away from him where they could not see him and he miscalled 250 ballots. I impounded the ballot box and locked it up and put it in a vault and guarded it and brought it into open court and recounted the ballots and just transformed that election from a majority of 252 against a man to 152 in favor of him. It is things like that that I want to get at.

Attorney General CLARK. One of the cases in Kentucky in the Saylor group was where there were four gentlemen sitting around the table counting the ballots. Two were counters calling them off and the others were taking them down. It was very difficult for us to prove whether the man who was taking them down put down more than were called or less or whether the man who was calling called more or less than actually existed. We lost the case. It is the only one we lost out of 99 cases in that one county.

Mr. JENNINGS. In two instances I impounded the ballots and they spoke for themselves where there had been no opportunity to tamper with them.

Attorney General CLARK. That is presently in violation of a Federal statute. There is some discussion about whether or not the Federal statute extends to primaries. The classic case said that where the primary is tantamount to election, it does. It has not been decided. A State like your own sometimes goes Republican.

Mr. KEATING. Not very often.

Attorney General CLARK. It is hard to find whether it is tantamount.

Mr. JENNINGS. We have in the State of Tennessee two instances where a primary is tantamount to election. That is where it is true with all the other eight districts.

Attorney General CLARK. It would eliminate the necessity of showing that it is tantamount to election by placing in here "in a special, primary, or general election."

Mr. JENNINGS. That is what I have in mind, and I wish you would see fit to make an injunction applicable.

Attorney General CLARK. We do, sir. That is in the next section, 213 on page 15. The rest of this section we are talking about, Mr. Chairman, is merely corrective or declaratory of existing cases.

Mr. DENTON. Let me ask you about 212 on page 15 where there is a city election or township election. Do you think the Government has the right to prescribe rules for that kind of an election?

Attorney General CLARK. It does not go that far, does it?

Mr. DENTON. As I read it very hastily that is what I thought it did.

Mr. CELLER. On page 14 it more or less defines it general, special, or primary election.

Attorney General CLARK. That is just with reference to rates. In other words, as we view the Constitution we can pass a Federal law that would do that. You will read that in line 10, sir.

Mr. DENTON. I see your point.

Attorney General CLARK. Are there any other questions about that section?

Mr. CELLER. One more question. Would not the line 19 on page 13, subdivision of 6, which reads as follows: "The right to vote as protected by Federal law" cover activities that would interfere with the cherished right of the citizens concerning voting after they have actually cast the ballots?

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Attorney General CLARK. Yes; you mean to be properly counted?
Mr. CELLER. Yes.
Attorney General CLARK. Surely.
Mr. JENNINGS. My first recollection of the enforcement of the Federal election law to protect the right to vote grew out of the assault of a colored citizen in the town where I grew up who was a Republican and who knocked an old colored man in the head who was a Democrat. The Democrat went in and voted and this Republican colored man knocked him in the head. He was indicted in Federal Court and put in jail over it.
Attorney General CARK. Well, that is proper.
Section 213 is with reference to civil actions also insofar as this section 594 is concerned. That is an amendment of the Hatch Act. Section 213 provides not only that the party aggrieved can bring a suit for damages or a suit in equity for an injunction or for a declaratory judgment or any other relief but the Attorney General can do that too. We think that should be the right of the Attorney General to bring civil actions where he thinks it is proper. We can sometimes get better results that way than by criminal prosecutions. Sometimes we will go in both directions. That is the purpose of that section. Under present law one could bring a suit for damages but we wanted to spell it out here and also give one the right to bring preventive actions and to secure declaratory judgments also. That is why we put this section in insofar as the victim is concerned and also that we might extend those rights to the Attorney General. The courts of the State as well as the Federal Government are given jurisdiction in these civil actions so that there would not be a flooding of cases in the Federal courts. We might use the State courts as well.
The next part of this bill is against discrimination in interstate transportation. There has been quite a lot of talk about what the Commission recommended with reference to this problem. I have heard people in some sections of the country say that meant that hotels and various other places entirely of a local nature would be affected. This proposal merely extends to interstate transportation and the facilities incident to interstate transportation. As we view the language in this proposal it would extend to terminals. For example, here in Washington, as I understand it, the terminal is owned by the railroads. Possibly the cafe is operated under their supervision or management. So it would apply to the facilities in the terminal. It would apply to any interstate transportation but not to intrastate transportation. This is placing in the statute a right that is presently enjoyed, as we view it, by the Interstate Commerce Commission under the Interstate Commerce Act. It is declaratory of a right that we think now exists in the Commission. It places it in this act as an affirmative offense for anyone to discriminate or segregate in interstate transportation.
The provisions of this particular part of the bill are very clear and I am sure they don't need too much discussion. I did want to make it clear that it is not the intention of the language here to extend to local matters at all except insofar as they are the facilities of interstate transportation such as a railroad terminal or something of that kind.
Mr. BYRNE. Of course, that follows generally the language of the Mitchell case, and the Pullman case.

Attorney General CLARK. Mr. Plaine says it is very close to that language.
Mr. BYRNE. In other words, it is something standing still the same as something moving.
Mr. KEATING. Generally is the test whether the method of transportation and the accompanying facility is interstate or intrastate in character, or is the test whether the person who claims to have been discriminated against moving in interstate or intrastate transportation?
Attorney General CLARK. I rather thought the test was the public conveyance, not the individual. I think it is the railroad itself or whatever public conveyance it might be that is moving in interstate transportation.
Mr. KEATING. In other words, if discrimination were practiced on a railroad which ran between two States, in one of which under State law segregation was practiced, it would be an offense, even though that pesron who was availing himself of the facilities was intending to move only within the State itself.
Attorney General CLARK. That is true. If a person got on the train to go from one point within a State to another point within the State, riding on an interstate transportation facility, if he were segregated or discriminated against it would be in violation of this proposal. I think that is practically the only way you could go after the problem.
Mr. KEATING. I presume that is true.
Attorney General CLARK. Are there any questions, Mr. Chairman?
Mr. BYRNE. Do the members of the committee have any further questions?
Mr. JENNINGS. Just this, Mr. Attorney General: I will submit a suggestion to you for your approval or disapproval. I would like to have the protection of section 594 or the application of that provision apply to the action of an individual or to a conspiracy between two or more individuals to violate the provisions of the law applicable to a primary election or a special election in which a Member of Congress is chosen.
In other words, I have in mind what I have seen happen and I have in mind what I have definite information will be attempted again.
Attorney General CLARK. I would love to have that. I am more or less familiar with your problem.
Mr. JENNINGS. I appreciate that fact and I want the privilege of presenting it to you.
Attorney General CLARK. It would be very helpful if you would. I am familiar with the problem in your district and if you have some particular suggestions we would love to have them.
Mr. JENNINGS. I have been sent to school on these things.
Mr. CELLER. I am deeply sympathetic to what our good friend says, but would the general conspiracy statute not cover that?
Attorney General CLARK. You mean section 88?
Mr. CELLER. Well, what Mr. Jennings has reference to is section 594 which provides for an individual who does certain things, attempts intimidation and so forth, or in any voting process is guilty of such an infraction. Is it necessary to put words in to provide that if two or more people do it they are in a conspiracy to do it? Would that not come under the general conspiracy statute?
Attorney General CLARK. You could bring it under section 88.

Mr. JENNINGS. But I had in mind the precise thing that has been done and I have reason to believe will be done again. These fellows who are going to do that do not know about these statutes. If it is spelled out to them it is just like looking at a sign you see at a railroad crossing. When you hear the bell and the whistle, look out for the cars. Spell it out to them.

Mr. CELLER. I have no objection.

Mr. JENNINGS. I want to talk to you about that. I know what I am dealing with and I know who I am dealing with.

Attorney General CLARK. I am familiar with some of your problems. You know you and I went over them two or three times and I tried my best to help you. If you have any suggested language that will take care of some of those problems, I will be happy to receive it and see if we cannot work it in.

Mr. JENNINGS. I will work it in.

Mr. BYRNE. Thank you, gentlemen. Thank you, General Clark. Is there anyone else?

(The statements referred to follow:)

STATEMENT AND ANALYSIS BY THE ATTORNEY GENERAL CONCERNING THE PROPOSED CIVIL RIGHTS ACT OF 1949

GENERAL BACKGROUND

The fourteenth amendment to the Constitution, adopted in 1868, prohibits the States from making or enforcing laws "which shall abridge the privileges or immunities of citizens of the United States," from depriving "any person of life, liberty, or property, without due process of law," and from denying to any person "the equal protection of the laws."

The fifteenth amendment, which was added to the Constitution in 1870, provides that,

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

To avoid any doubts on the score, the amendments specifically authorize the Congress to provide for their enforcement "by appropriate legislation." But it is not questioned that the amendments are self-executing in that they render void and ineffectual any State action in conflict with them (*Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Ex parte Yarbrough*, 110 U. S. 651 (1884)).

The thirteenth amendment, adopted in 1865, by its terms abolished slavery and involuntary servitude. But Congress was, as in the later amendments, empowered to provide for enforcement by appropriate legislation. It was never doubted that slavery was thereby destroyed, yet the Congress was expressly given power to implement the amendment (*Clyatt* v. *United States*, 197 U. S. 207 (1905)).

The framers of these amendments, in their wisdom, sought to have enacted not unyielding ordinances limited in their terms to specific situations and cases, but an additional part of a plan of government, declaring fundamental principles, as in the case of the original charter. The Constitution "by apt words of designation or general description, marks the outlines of the powers granted to the National Legislature; but it does not undertake, with the precision of detail of a code of laws, to enumerate the subdivisions of those powers, or to specify all the means by which they may be carried into execution" (Legal Tender Cases, 110 U. S. 439 (1884)). Thus the amendments declare the fundamental principles, which are effective and self-executing insofar as they may apply to a particular matter, but the Congress is empowered to extend their principles to meet the many situations and different circumstances which arise with the growth and advancement of our complex civilization. In the words of Mr. Justice Bradley, from the opinion in the Civil Rights Cases (109 U. S. 3, 20 (1883)):

"This amendment (the thirteenth), as well as the fourteenth, is undoubtedly self-executing without any ancillary legislation, so far as its terms are applicable

to any existing state of circumstances. By its own unaided force and effect it abolished slavery, and established universal freedom. Still, legislation may be necessary and proper to meet all the various cases and circumstances to be affected by it, and to prescribe proper modes of redress for its violation in letter or spirit."

Following the Civil War a number of civil-rights statutes were enacted, but over the years, through decisions of the Supreme Court and Congressional action in 1894 and 1909, the laws implementing the three amendments were reduced in number and scope to the following:

Section 241, title 18, United States Code, conspiracy against rights of citizens, making a conspiracy to injure a citizen in the exercise of his Federal rights a felony;

Section 242, title 18, deprivation of rights under color of law, making willful action, under color of law, to deprive an inhabitant of his Federal rights a misdemeanor;

Section 243, title 18, exclusion of jurors on account of race or color, forbidding disqualification for jury service on account of race or color, and making such action by officers charged with selecting jurors a crime punishable by fine:

Section 594, title 18, intimidation of voters, enacted as part of the Hatch Act, making it a misdemeanor to intimidate any voter at a Federal election (but without clear reference to primary elections, as is discussed later).

Section 43, title 8, civil action for deprivation of rights, and section 47, title 8, conspiracy to interfere with civil rights, provide civil causes of actions for persons injured by deprivations and interferences generally similar to the wrongs punishable under the criminal provisions of title 18, sections 241 and 242. Sections 31, 41, and 42, title 8, declare the existence of equality without distinction as to race or color, in matters of voting, owning property, ability to contract, sue, give evidence, and the like; and section 56 of the same title abolishes peonage.

Section 1581, title 18, peonage; obstructing enforcement, makes the holding or returning of a person to a condition of peonage a crime; and section 1583, enticement into slavery, and section 1584, sale into involuntary servitude, make criminal the kidnaping, carrying away, or holding of a person to a condition of slavery or involuntary servitude.

(The texts of the foregoing statutes are set forth in appendix A.)

The existing civil-rights statutes fall far short of providing adequate implementation of the amendments protecting life, liberty, and property.

America has a great heritage of freedom, and few nations have come closer to achieving true liberty and democracy for its people. But the goal has not been reached. Much remains to be done, which can be done. It is clear that the present civil-rights statutes do not represent the full extent of the congressional power. It is equally clear that there is a real need for a broadening of the statutes, not necessarily to the fullest extent legally possible, but at least to overcome the shortcomings of the existing laws.

By way of example, the courts have had difficulties in dealing, among others, with two of the important statutes, sections 241 and 242, title 18, U. S. Code, and have on occasion practically invited congressional clarification. In *Screws* v. *United States* (325 U. S. 91 (1945)), where four separate opinions were written by the Justices of the Supreme Court in construing 18 U. S. C. 242, Mr. Justice Douglas in the prevailing opinion indicated that the limitations imposed on the use of section 242 were inherent in the statute, and "If Congress desires to give the act wider scope, it may find ways of doing so." Further, if the meaning given to the statute by the Court "states a rule undesirable in the consequences, Congress can change it", 325 U. S. 91, 105, 112–113. Similarly, in *Baldwin* v. *Franks*, 120 U. S. 678 (1887), the Court, in dealing with 18 U. S. C. 241, suggested that Congress might cure by appropriate amendment what the Court found to be the limited application of the statute to citizens only, rather than to all inhabitants, (120 U. S. 678, 692.)

In his message on the State of the Union in 1946, President Truman said:

"While the Constitution withholds from the Federal Government the major task of preserving the peace in the several States, I am not convinced that present legislation reaches the limit of Federal power to protect the civil rights of its citizens."

The President then informed the Congress of the creation of a special committee on civil rights to frame recommendations for additional legislation.

This committee, known as the President's Committee on Civil Rights, consisted of 15 distinguished Americans from all ranks of life. It was directed by the

President to "determine whether and in what respect current law-enforcement measures and the authority and means possessed by Federal, State, and local governments may be strengthened and improved to safeguard the civil rights of the people." (Executive Order No. 9808, December 5, 1946.)

Over a year later, after extensive work and research, the committee rendered its report to the President, entitled, "To Secure These Rights" (hereinafter referred to as Report). At the outset it was noted that it will not be denied that the United States possesses "a position of leadership in enlarging the range of human liberties and rights, in recognizing and stating the ideals of freedom and equality, and in steadily and loyally working to make those ideals a reality." Great and permanent progress was observed. Serious shortcomings were found and described. Constructive remedies were proposed.

The President, supported by the Department of Justice, which is continually engaged in the enforcement of the civil rights statutes, after careful study, concluded that the report of the President's committee was essentially sound and that its principal recommendations should be carried out.

In his message on civil rights, delivered to the Congress on February 2, 1948 (H. Doc. 516, 94 Congressional Record, February 2, 1948, at pp. 960–962), the President stated:

"One year ago I appointed a committee of 15 distinguished Americans, and asked them to appraise the condition of our civil rights and to recommend appropriate action by Federal, State, and local governments.

"The committee's appraisal has resulted in a frank and revealing report. This report emphasizes that our basic human freedoms are better cared for and more vigilantly defended than ever before, but it also makes clear that there is a serious gap between our ideals and some of our practices. This gap must be closed.

* * * * * * *

"The Federal Government has a clear duty to see that constitutional guaranties of individual liberties and of equal protection under the laws are not denied or abridged anywhere in our Union. That duty is shared by all three branches of the Government, but it can be fulfilled only if the Congress enacts modern, comprehensive civil-rights laws, adequate to the needs of the day, and demonstrating our continuing faith in the free way of life."

The President then recommended that the Congress enact legislation directed toward specific objects, including:

Establishing a permanent commission on civil rights, a joint congressional committee on civil rights, and a civil-rights division in the Department of Justice.

Strengthening existing civil-rights statutes.

Protecting more adequately the right to vote.

Prohibiting discrimination in interstate transportation facilities.

These points are met in H. R. 4682. I strongly urge the enactment of the bill, and I join with the President's Committee in its view that "national leadership in this field is entirely consistent with our American constitutional traditions" (report, p. 104).

Analysis of Proposed Civil Rights Act of 1949

Section 1 provides for the dividing of the act into titles and parts according to a table of contents, and for a short title, "Civil Rights Act of 1949."

Section 2 contains legislative findings and declarations.

Section 3 is a provision for separability.

Section 4 authorizes appropriations.

In my view the findings are the summation of years of experience, and reflect hard, physical facts which the President's Committee on Civil Rights, among others, has reported on, and which we at the Department of Justice meet daily. The purposes to be accomplished by the bill are purposes which this Nation has sought to achieve since its founding. We have always had the ideal and so long as we seek to realize it we are a healthy, vigorous Nation. Great gains have been made, but greater gains will be made if this bill is enacted. The bill does not purport to solve every problem and cure every evil; it does, however, represent a gerat forward step toward the goal of full civil liberties for all.

TITLE I—PROVISIONS TO STRENGTHEN THE FEDERAL GOVERNMENT MACHINERY FOR THE PROTECTION OF CIVIL RIGHTS

Part 1—A Civil Rights Commission

Section 101 creates a five-member commission on civil rights in the executive branch of the Government, and makes the necessary provision for the appointment of the members, the officers, vacancies, quorum, and compensation.

Section 102 provides for the duties and functions of the commission, including the making of an annual report to the President. (No hearing or subpena powers are conferred.) To state it simply, the job of the commission would be to gather information, appraise policies and activities, and make recommendations.

Section 103 provides for the use of advisory committees, consultation with public and private agencies, and Federal agency cooperation. A paid staff is authorized, as well as the use of voluntary services.

At the present time the only unit in the executive branch of the Government which is specifically dedicated to work pertaining to civil rights of the people generally is the Civil Rights Section of the Department of Justice. (The work of the section is more fully discussed below, in connection with the proposed Civil Rights Division.) This section is a unit of the Criminal Division. Neither the section nor the Department has adequate facilities for studies or coordinating activities in civil rights matters. There is no agency which follows developments in the Federal or State spheres in civil rights, which can report authoritatively to the President or the Congress, or to the people, on the state of the constitutional liberties and safeguards, which can undertake research or survey projects for legislative purposes. In the fields of securities, trade and commerce, interstate carriers, labor, foreign affairs, defense, finance, and practically every other important phase of modern human endeavor, the Federal Government possesses highly qualified, specialized administrative and research agencies responsible for keeping the Government and the Nation abreast of all movements, trends, and developments. At any time that a new situation arises which calls for action, an expert opinion and thorough appraisal is available. But in the supremely important field of constitutional rights, the Government has no expert body or specialized agency for guidance and leadership.

It is not enough to protect rights now fully recognized and freely enjoyed if we are to progress toward enlarging the range of our liberties and privileges. We must be continually vigilant, prepared for every new form of attack upon the ideals and practices of our free society. We must be in a position to recognize the existence of the disease when it strikes, to diagnose it, to prepare a remedy and to apply such remedy—without giving it time and opportunity to spread and weaken our national fiber.

The White House and the Department of Justice receive a volume of mail from private citizens, including students, teachers, and universities, and, in some instances, from State officials, requesting information and guidance in constitutional problems—frequently in connection with civil liberties. Such mail is usually of necessity channeled to the Civil Rights Section, but it is far too overburdened to cope with the requests. Because of limited personnel and facilities, it must restrict its activities to the enforcement of the criminal civil-rights statutes. It can only use expedients such as referring communicants to privately written and published books (which the Department does not and cannot officially approve), and to private organizations and universities which study and report on the problems. (The NAACP, American Civil Liberties Union, Fisk University, and others have done notable work in the field. Much of the general information which the Department presently possesses has been furnished by such organization.)

As stated by the President's committee:

"In a democratic society, the systematic, critical review of social needs and public policy is a fundamental necessity. This is especially true of a field like civil rights, where the problems are enduring, and range widely. From our own effort, we have learned that a temporary, sporadic approach can never finally solve these problems.

"Nowhere in the Federal Government is there an agency charged with the continuous appraisal of the status of civil rights, and the efficiency of the machinery with which we hope to improve that status. There are huge gaps in the available information about the field. A permanent commission could perform an invaluable function by collecting data. It could also carry on technical research to improve the fact-gathering methods now in use. Ultimately, this would make possible a periodic audit of the extent to which our civil rights are secure. If it

did this and served as a clearing house and focus of coordination for the many private, State, and local agencies working in the civil-rights field, it would be invaluable to them and to the Federal Government." (Report, p. 154.)

The President, in his civil-rights message of February 2, 1948, made the following specific proposal to meet the need:

"As a first step, we must strengthen the organization of the Federal Government in order to enforce civil-rights legislation more adequately and to watch over the state of our traditional liberties

"I recommend that the Congress establish a permanent Commission on Civil Rights reporting to the President. The Commission should continuously review our civil-rights policies and practices, study specific problems, and make recommendations to the President at frequent intervals. It should work with other agencies of the Federal Government, with State and local governments, and with private organizations."

The commission on civil rights proposed by this bill would have, in substance, the following functions and duties: It would act as a fact-finding agency concerned with the state of our civil rights, the practices of governments and organizations affecting civil rights, and with specific cases and situations involving deprivations of the rights of any person, group of persons, or section of the population. It would act as a research agency investigating general civil-rights problems to determine their causes and to recommend cures, either by legislation or by other means under existing laws. It would act as an educating and informational agency to keep before the people and their governments the importance of preserving and extending civil rights, not only for the concrete gains such actions would result in, but to bring about a greater awareness of the obligations of this Nation as a member of the United Nations. It would act for the Federal Government in working for and cooperating with the States and local governments in the solution of civil-rights problems, offering advice and assistance where desired or needed. In brief, the commission would represent the Government and the people, as well as provide leadership, in a continuing, vital phase of American life and society.

The establishment of an advisory commission or board to advise and assist the President is, of course, not an unusual action. With the growth of the Nation and the increase in the complexities of life and civilization, it has become increasingly necessary to make available expert agencies to handle the highly technical and involved problems naturally resulting. In the nineteenth century the process of building administrative machinery to meet the demands of an emerging industrial society began; the process was rapidly accelerated in the present century with the development of new avenues of enterprise in communication, commerce, finance, and general welfare. The administrative agencies, in order to carry out and enforce the Congressional policies, early found it necessary to develop their facilities for research and fact finding. These were used not only in the application of the specific laws within their jurisdiction, but in planning new programs to meet new problems as they arose. The stories of radio, television, air travel, securities and stock exchanges, and others, are too well known to need repeating here.

Advisory commissions and boards not charged with the administration of a regulatory statute have also been created, serving the President, the Congress, and the Nation in the formulation of policies and programs to be proposed to the Congress. Thus, the National Security Resources Board (61 Stat. 499; 50 U. S. C. 404 (1947 Supp.)) was created in 1947 "to advise the President concerning the coordination of military, industrial, and civilian mobilization * * *." Also in 1947 the Commission on Organization of the Executive Branch was created (61 Stat. 246; 5 U. S. C. 138 (a) et seq. (1947 Supp.)) to study and report on the operations and organizations of the several agencies, departments, and bureaus of the executive branch.

By the Employment Act of 1946 (60 Stat. 23; 15 U. S C. 1021 et seq.), the Congress established a Council of Economic Advisers in the Executive Office of the President charged with duties and functions to gather information concerning economic developments and trends, to appraise relevant programs and activities of the Government, "to develop and recommend * * * national economic policies to foster and promote free competitive enterprise * * *," and to make and furnish studies, reports, and recommendations (15 U. S. C. 1023).

The powers given to the council are in many respects similar to those which would be given to the Civil Rights Commission by this bill, and the purposes and methods of the two groups for the attainment of their respective objectives would also be quite similar. Congress in the field of employment and economic stability

of the Nation recognized the need for a continuing executive agency to supervise and study developments, and the need in the field of constitutional civil rights should also be as clearly and decisively acknowledged and met. There is more than adequate precedent for the creation of a Civil Rights Commission as proposed in this bill, and there is more than an abundance of need for such a commission.

Part 2—Civil Rights Division, Department of Justice

Section 111 calls for the appointment of an additional Assistant Attorney General to be in charge, under the direction of the Attorney General, of a Civil Rights Division of the Department of Justice.

Section 112 makes provision for increasing, to the extent necessary, the personnel of the Federal Bureau of Investigation to carry out the duties of the Bureau in respect of investigation of civil-rights cases; and for the Bureau to include special training of its agents for the investigation of civil-rights cases.

As I have pointed out, the Civil Rights Section is but one small unit of the Criminal Division of the Department. It has averaged during the 10 years of its existence (having been created in February 1939 by Attorney General, now Mr. Justice, Frank Murphy) from six to eight attorneys who are responsible for supervising the enforcement of the Federal civil-rights laws throughout the Nation The necessary investigative work is done by the Federal Bureau of Investigation, pursuant to the request of and in cooperation with the section and the United States attorneys, but coordination and policy are effected and determined by the section, with the approval of the Assistant Attorney General in charge of the Criminal Division. The following is an observation by the President's committee:

"The Civil Rights Section's name suggests to many citizens that it is a powerful arm of the Government devoting its time and energy to the protection of all our valued civil liberties This is, of course, incorrect. The section is only one unit in the Criminal Division of the Department of Justice. As such, it lacks the prestige and authority which may be necessary to deal effectively with other parts of the Department and to secure the kind of cooperation necessary to a thorough-going enforcement of civil-rights law. There have been instances where the section has not asserted itself when United States attorneys are uncooperative or investigative reports are inadequate. As the organization of the Department now stands, the section is in a poor position to take a strong stand in such contingencies" (report, p. 125).

The Assistant Attorney General in charge of the Criminal Division, as you know, is responsible for the enforcement of a multitude of criminal laws, ranging from espionage and sedition to the Mann Act and the Lindbergh law, and from the Fair Labor Standards Act to the postal laws. He must, of necessity, devote a great deal of his time to the many important matters faced by his division in addition to those presented through the Civil Rights Section.

The section, in addition to the enforcement of the civil rights and slavery and peonage statutes, is responsible for the enforcement of the criminal provisions of the Fair Labor Standards Act (29 U. S. C 201 et seq.); the penalty provisions of the Safety Appliance Acts, dealing with railroads (45 U. S. C. 1, et seq.); the Kickback Act (18 U. S. C. 874); the Hatch Political Activity Act, and other statutes relating to elections and political activities (18 U. S. C. 591–612); and sundry statutes designed or capable of being employed to protect the civil rights of citizens, to promote the welfare of workingmen, to safeguard the honesty of Federal elections, and to secure the right of franchise to qualified citizens. (For example, Railway Labor Act, 45 U. S. C. 152; or the statute relating to the transportation of strikebreakers, 18 U. S. C. 1231.)

Due to the limitations under which the section necessarily operates and has operated, it has not undertaken to police civil rights. The only cases it has handled are those which were brought to its attention by complainants, either directly or through the Federal Bureau of Investigation, the United States attorneys, or other Government agencies. Nevertheless, it has received a great number of letters and complaints. The section has received about 10,000 letters each year concerning civil liberties. (See appendix B.) The majority of these letters make clear the misconception which most members of the general public share regarding the scope of present Federal powers. It is estimated that only one-fifth of the letters involved a complaint of a possible deprivation of a right now federally secured. However, since the report of the President's Committee was issued in October 1947, a clearer awareness of the Federal Government's function in the field has apparently been created, and a larger number of civil

rights complaints of some substance, appropriate for Federal attention, have been received.

In addition to the civil rights cases, a large number of intricate cases involving alleged crimes in the field of elections and political activities have been received by the section, many from members of the Congress. And, of course, a steady volume of prosecutions under the Fair Labor Standards Act and the miscellaneous statutes handled by the section adds to the burden.

As stated by the President's committee:

"At the present time the Civil Rights Section has a completent of seven lawyers, all stationed in Washington. It depends on the FBI for all investigative work, and on the regional United States attorneys for prosecution of specific cases. Enforcement of the civil rights statutes is not its only task. It also administers the criminal provisions of the Fair Labor Standards Act, the Safety Appliance Act, the Hatch Act, and certain other statutes. It is responsible for processing most of the mail received by the Federal Government which in any way bears on civil rights. Although other resources of the Department of Justice are available to supplement the Civil Rights Section staff, the section is the only agency in the Department with specialized experience in civil rights work. This small staff is inadequate either for maximum enforcement of existing civil rights statutes, or for enforcement of additional legislation such as that recommended by this committee.

"The committee has found that relatively few cases have been prosecuted by the section, and that in part this is the result of its insufficient personnel. The section simply does not have an adequate staff for the careful, continuing study of civil rights violations, often highly elusive and technically difficult, which occur in many areas of human relations" (report, pp. 119–120).

Appendix B, attached hereto, contains a statistical summary of the work of the Civil Rights Section.

Notwithstanding the difficulties and limitations under which the section labors, it is called upon to deal with essential civil rights activities beyond the strict duties of prosecuting criminal cases. It assisted the Solicitor General in the preparation of the amicus curiae brief submitted by the Department to the Supreme Court in the restrictive covenant cases (*Shelley* v. *Kraemer*, 334 U. S. 1 (1948)), and it has aided the office of the Assistant Solicitor General in cooperating with the State Department in connection with United States participation in the preparation by the United Nations of the Universal Declaration of Human Rights and of a proposed covenant to enforce some of these rights. The section has assigned attorneys to the preparation and argument of appellate civil rights cases and has sent attorneys to the field in connection with the investigation and prosecution of difficult and complicated cases, including election crimes matters.

The President in his message on civil rights to the Congress, as one of the steps to be taken to strengthen the organization of the Federal Government to enforce civil-rights laws, specifically recommended "that the Congress provide for an additional Assistant Attorney General" to supervise a Civil Rights Division in the Department of Justice. This recommendation is incorporated in the present bill.

With the creation of the Civil Rights Division, all the above-described necessary activities could be conducted with greater thoroughness and dispatch, and important tasks, not now undertaken, could be assumed. The civil rights enforcewent program would be given "prestige, power, and efficiency that it now lacks" (report, p. 152). Enactment of the President's program on civil-rights legislation would, of course, necessitate an increase in staff to cope with the increase in burdens. An expanded organization on divisional lines can meet the added requirements, but is certainly important even in the present situation. In the words of the executive secretary of the President's Committee on Civil Rights,

"With an expanded staff * * * the Civil Rights Section would be in a better position to search out civil-liberty violations and to take action designed to prevent violations. It would not have to limit itself, as it has in the past, to taking action after complaints are filed by outside persons. For example, there are sometimes advance warnings when a lynching is threatened, and when such warning signs are seen, the Civil Rights Section could send an agent of its own into the danger area or exercise greater authority to direct the activities of the Federal Bureau of Investigation agents. Such early action might frequently deter persons from contemplated unlawful conduct. At least it would place Federal officers in a position to obtain evidence promptly should an offense under civil-rights legislation be committed. This might make it possible to avoid the result that prevailed in the 1946 lynchings at Monroe, Ga. In that instance, extensive but belated Federal investigations could produce no evidence leading to an indictment of the culprits" (Robert K. Carr, "Federal Protection of Civil Rights—Quest for a Sword," p. 209).

To constitute an efficient and complete organization, the Division would include specialized units devoted to the enforcement of the criminal civil-rights statutes, the enforcement of the peonage and slavery statutes, the enforcement of the election and political activities laws, the administration of the labor and related laws, and legal and factual research and appeals. An important function to be developed, with the aid of legal tools which this bill can provide, is greater use of preventive civil remedies, wherein the Attorney General may proceed in the public interest, not by way of punishment, but to prevent and enjoin threatened infringements and deprivations of rights. An expanded Division would not only deal in such matters but also ought to be prepared to intervene in important litigation affecting civil rights. Even now, under the few current statutes, court construction of the existent civil remedy provisions has serious bearing upon the criminal cases, and vice versa, since the language of both is regard substantially in pari materia. (See *Picking* v. *Pa. R. R. Co.* 151 F. (2d) 240, rehearing denied 152 F. (2d) 753.)

In addition, an increase in the civil-rights staff would serve an essential purpose by providing skilled attorneys who could go into the field to coordinate activities and supervise investigations, as well as try cases and argue appeals. At the present time, practically all of these functions, especially the trial work, must be handled as best can be by the United States attorneys who, of course, are responsible for many other kinds of cases, both civil and criminal, involving interests of the United States.

With regard to the investigative work in the enforcement of the civil-rights statutes, I have already observed that this is done by the Federal Bureau of Investigation. The FBI is, of course, concerned with the enforcement of most of the Federal criminal statutes and of necessity can assign only a limited number of agents to civil-rights work. The facilities of the Bureau have been severely taxed on many occasions when important and involved cases required investigation and they have been consistently used practically to the maximum in investigating the continued volume of complaints. In spite of these handicaps, the Bureau has done a splendid job in civil-rights cases. Any increase in the activities of the present section (or a new division) would require a corresponding increase in the work of the Bureau—a fact which is recognized in the bill.

Part 3—Joint Congressional Committee on Civil Rights

Section 121 establishes a Joint Congressional Committee on Civil Rights to be composed of 14 members—7 Senators to be appointed by the President of the Senate, and 7 Members of the House Representatives to be appointed by the Speaker—with due regard for party representation.

Section 122 provides for the duties of the committee.

Section 123 deals with vacancies and selection of presiding officers.

Section 124 makes provision for hearings, power of subpena, and expenditures.

Section 125 provides for the formalities of disbursements.

Section 126 authorizes the use of advisory committees and consultation with public and private agencies.

The desirability and need for the establishment of a Joint Congressional Committee on Civil Rights, along with the recommended Commission in the executive branch and a Civil Rights Division in the Department of Justice, was stated by the President's committee:

"Congress, too, can be aided in its difficult task of providing the legislative ground work for fuller civil rights. A standing committee, established jointly by the House and Senate, would provide a central place for the consideration of proposed legislation. It would enable Congress to maintain continuous liaison with the permanent Commission. A group of men in each chamber would be able to give prolonged study to this complex area and would become expert in its legislative needs" (report, p. 155).

Following the committee's report, the President in his message stated:

"I also suggest that the Congress establish a Joint Congressional Committee on Civil Rights. This committee should make a continuing study of legislative matters relating to civil rights and should consider means of improving respect for and enforcement of those rights."

The President noted that the Joint Congressional Committee and the Commission on Civil Rights—

"together should keep all of us continuously aware of the condition of civil rights in the United States and keep us alert to opportunities to improve their protection."

It is appropriate at this point to quote from an early case by Mr. Justice Story:

"The Constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers, or to declare the means by which those powers should be carried into execution. It was foreseen that this would be perilous and difficult, if not an impracticable task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter; and restrictions and specifications, which, at the present, might seem salutary, might, in the end, prove the overthrow of the system itself. Hence, its powers are expressed in general terms, leaving to the legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mold and model the exercise of its powers, as its own wisdom, and the public interests, should require" (*Martin* v. *Hunter*, 14 U. S. (1 Wheat.) 304, 326 (1916)).

To enable "the legislature * * * to adopt its own means to effectuate legitimate objects," congressional committees are created and engage in continuous activity to keep the Congress fully informed in the several fields of Federal concern. Creation of the Joint Committee on Civil Rights would be a recognition of the great importance which the Congress attaches to the protection of the civil rights and liberties of the people.

Congress has, in recent years, enacted statutes creating joint congressional committees to survey, study, and investigate certain fields of enterprise and to make recommendations and reports as to necessary legislation and as otherwise may be deemed advisable. Thus, in the field of labor, a congressional Joint Committee on Labor-Management Relations was created by the Labor-Management Relations Act of 1947 (61 Stat. 160; 29 U. S. C. 191 et seq. (1947 Supp.)). The committee was required by law, among other things, "to conduct a thorough study and investigation of the entire field of labor-management relations * * *" (29 U. S. C. 192).

In the Atomic Energy Act of 1946 the Congress established a Joint Committee on Atomic Energy (60 Stat. 772; 42 U. S. C. 1815); and required it, among other things, to "make continuing studies of the activities of the Atomic Energy Commission and of problems relating to the development, use, and control of atomic energy."

Again, in the Employment Act of 1946, the Congress established a joint committee, known as the Joint Committee on the Economic Report (60 Stat. 25; 15 U. S. C. 1024). This group was required by the law to "make a continuing study of matters relating to the economic report" required to be submitted by the President by another provision of the statute (15 U. S. C. 1022), to "study means of coordinating programs in order to further the policy of this chapter," and to report to both Houses of the Congress its findings and recommendations as specified. It may be noted again that by the Employment Act the Congress also created a commission in the executive branch, the Council of Economic Advisers in the Executive Office of the President. As indicated before, in discussing the proposed Civil Rights Commission, the Congress in the Employment Act recognized the need for a continuing agency in the executive branch as well as in the Congress to survey the field in question and recommend and report in connection therewith.

The establishment of the foregoing joint committees, as well as of others, was in recognition of the need in our complex society for specialized agencies to keep abreast of developments in vital branches of American life so that new problems and difficult situations can be met without delay by agencies best equipped to do so. The need is no less vital in the field of constitutional rights and liberties.

TITLE II. PROVISIONS TO STRENGTHEN PROTECTION OF THE INDIVIDUAL'S RIGHTS TO LIBERTY, SECURITY, CITIZENSHIP AND ITS PRIVILEGES

Part 1. Amendments and supplements to existing civil rights statutes

Section 201: Among the existing civil rights laws, already noted, is 18 U. S. C. 241 (which was 18 U. S. C. 51 prior to the 1948 revision of title 18; see appendix A). This is a criminal conspiracy statute which has been used to protect federally secured rights against encroachment by both private individuals and public officers. Several changes are porposed, pursuant to recommendations made by the President in his civil rights message (1948) to the Congress.

The phrase "inhabitant of any State, Territory, or District" is substituted for the word "citizen." This would bring the language into conformity with that of 18 U. S. C. 242 (formerly 18 U. S. C. 52; see appendix A), which is a generally parallel protective statute designed to punish State officers who deprive inhabitants of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. Section 241 has had a narrower construction because of the use of the word "citizen," as, for example, in *Baldwin* v. *Franks* (120 U. S. 678 (1887)), holding that an alien did not come within the protection of the section. On the other hand, in referring to the rights of "inhabitants," the language used in 18 U. S. C. 242 does not exclude from its scope protection of the rights which may happen to be accorded only to citizens, such as the right to vote. Thus, section 242, addressed to protecting the right of inhabitants, applies to the deprivation of constitutional right of qualified voters to choose representatives in Congress, and was held to protect the rights of voters in a primary election, which was prerequisite to the choice of party candidates for a congressional election, to have their votes counted, *United States* v. *Classic* (313 U. S. 299 (1941), rehearing denied, 314 U. S. 707). Since the Classic case also involve and upheld a conspiracy count under 18 U. S. C. 241 (then 18 U. S. C. 51), there would appear to be no danger of harm to the existing protection of Federal rights of citizens in extending section 241 to cover "inhabitants" as in section 242.

It should be noted that in *Baldwin* v. *Franks*, supra, doubt was expressed as to whether Congress had or had not used the word "citizen" in the broader or popular sense of resident, inhabitant, or person (120 U. S. 678, 690, see also dissent of Harlan, J., at pp. 695–698), which a majority of the Court resolved in favor of the narrower political meaning of citizen. In so doing the Court added: "It may be by this construction of the statute some are excluded from the protection it affords who are as much entitled to it as those who are included; but that is a defect, if it exists, which can be cured by Congress, but not by the courts" (ibid., p. 692).

The fourteenth amendment protects "any person," not merely those who are citizens, from State actions in deprivation of life, liberty, or property without due process of law, or in denial of the equal protection of the laws. Hence, the proposed change in section 241 to inhabitant is without doubt within the power of Congress, as the Court indicated in the Baldwin case.

In addition to removing what appears to be an unnecessary technical limitation to "citizens," it may properly be urged, at this date, that the extension of coverage is in accordance with the general public policy of the United States, as subscribed to in the United Nations Charter, to promote respect for, and observance of, human right and fundamental freedoms for all.

Section 241 of title 18, United States Code, is a conspiracy provision. There is no legal reason why protection should be given only in cases of conspiracy. The President, in his mesasge of February 2, 1948 (94 Congressional Record 960), as did the President's Civil Rights Committee (report, p. 156), recommended an extension to the cases of infringements by persons acting individually. That is the purport of new subsection (b). As a result the present section 241 is retained by numbering it subsection (a). It remains separtely identifiable as the conspiracy provision, which has had a long history of interpretation and which has been sustained as constitutional against various forms of attack (*Ex parte Yarbrough*, 110 U. S. 651 (1884); *Logan* v. *United States*, 144 U. S. 263 (1892); *United States* v. *Mosely*, 238 U. S. 383 (1915)).

An additional reason for separating the present conspiracy law, new subsection (a), from the proposed individual responsibility provision, new subsection (b), was the desire to adjust penalty provisions. It was thought that the action by a single individual condemned in section 241 (b) might parallel in penalty the individual violation in section 242 (a principal difference between the two sections is that the offender in sec. 242 is always a public officer). And since section 242 has always been criticized as being too mild for the serious cases (though otherwise advantageous, as discussed below in the comment under sec. 202), a more formidable penalty is provided for these cases in both 241 (b) and 242. As stated by the President's Committee—

"At the present time the act's (sec. 242) penalties are so light that it is technically a misdemeanor law. In view of the extremely serious offenses that have

been or are being successfully prosecuted under section 52 (now 242), it seems clear that the penalties should be increased" (report, p. 156).

To bear out the committee's contention, reference need be made only to *Screws* v. *United States* (325 U. S. 91 (1945)), and *Crews* v. *United States* (160 F. (2d) 746 (C. C. A. 5, 1947)). The latter case involved the brutal murder by a town marshal of a defenseless victim. The Court pointed out the inherent shortcomings of present Federal enforcement under existing laws as follows:

"The defendant, although guilty of a cruel and inexcusable homicide, was indicted and convicted merely of having deprived his helpless victim of a constitutional right, under strained constructions of an inadequate Federal statute, and given the maximum sentence under that statute of 1 year in prison and a fine of $1,000" (ibid., p. 747).

Notwithstanding "the shocking details of the beating that Crews administered with a bull whip" upon the victim and the homicide which followed thereafter, the Government was able to proceed against Crews only on a misdemeanor charge. This defendant was never punished under State law.

Many instances of violations of the Federal civil-rights laws, which have come to our notice, also constitute serious offenses under State laws, which provide substantially more severe penalties than are provided by the present Federal civil-rights statutes, such as 18 U. S. C. 242. Unfortunately, however, where public opinion is indifferent, State officers, who violate the rights of persons less favored in the community, do escape local prosecution and punishment. Accordingly, while every effort is made to have State authorities proceed under local law against those who deprive others of their rights, the Department, when satisfied that the federally secured civil rights of a victim have been infringed, has felt bound to proceed under the Federal statutes, even though fully aware that in cases such as the Crews case the maximum punishment obtainable can never fit the crime.

The purpose of new subsection (c) of section 241 is to plug the gaps in the civil-remedy side. There already appears to be in existence a civil remedy for damages more or less covering the existing conspiracy violations of section 241 (a). This remedy is found in 8 U. S. C. 47 (appendix A). There is no parallel to cover proposed subsection (b), absent a conspiracy. In neither the case of subsection (a) nor subsection (b) is there clear-cut authorization for the bringing of proceedings other than for damages, unless the violators of sections 241 (a) and 241 (b) should happen to be State or Territorial officers (more often chargeable under 18 U. S. C. 242), in which case 8 U. S. C. 43 would appear to afford civil remedies ("in an action at law, suit in equity or other proper proceeding for redress"). See *Hague* v. *CIO* (307 U. S. 498 (1939)), a suit in equity against State officers. Parenthetically, for all practical purposes, 8 U. S. C. 43 is a parallel, on the civil side, of the criminal statute, 18 U. S. C. 242 (see *Picking* v. *Pa. R. R. Co.*, 151 F. (2d) 240 (1945), rehearing denied 152 F. (2d) 753); and it appears adequate to cover the situations on the civil side, which are similar to the criminal violations of 18 U. S. C. 242, without requiring further amendment or supplement of section 242 in that regard.

The jurisdictional provision of new subsection (c) of section 241, under which both the Federal district courts and the State and Territorial courts shall have jurisdiction of the civil proceedings, is well fortified with precedents. A similar provision in the Emergency Price Control Act of 1942 (50 U. S. C. A. App., secs. 925 (c) and 942 (k)), was recently sustained in *Testa* v. *Katt* (330 U. S. 386 (1947)). For an earlier example, under the Federal Employers' Liability Act, see *Mondou* v. *N. Y. N. H. etc. R. R. Co.* (223 U. S. 1 (1912)).

The portion of the proposed jurisdictional provision which reads "without regard to the sum or value of the matter in controversy" has been inserted to avoid misapprehension in these cases that jurisdiction of the Federal district courts is subject to the $3,000 or more requirement of 28 U S. C. 1331. The latter is a general jurisdictional provision. Exempted from it are the existing civil rights actions maintainable in the district courts, under 28 U. S. C. 1343, without regard to money value. *Douglas* v. *City of Jeannette* (319 U. S. 157 (1943), rehearing denied, ibid., 782); *Hague* v. *CIO* (307 U. S. 498). However, paragraphs (1) and (2) of 28 U. S. C. 1343 refer specifically to suits for damages growing out of the conspiracy provisions of 8 U. S. C. 47, and paragraph (3) follows closely the language of 8 U. S. C. 43, apparently dealing only with suits against public officers—"to redress the deprivation under color of any law, etc." (28 U. S. C. 1343 (3)). In consequence, it does not appear that 28 U. S. C. 1343 covers all of the civil-rights cases for which it is now proposed to create civil actions. Hence, the need for a provision which obviates a possible judicial

construction placing the new causes of action under the provisions of 28 U. S. C. 1331 and its money value requirement.

Section 202: This section amends 18 U. S. C. 242 (see appendix A), but leaves it intact except in regard to the matter of penalty. As already indicated in the discussion of the previous section, this is a statute which is used to protect federally secured rights against encroachment by State officers. There has been criticism that the penalty of a fine not more than $1,000 or imprisonment of not more than 1 year, or both, is too light in the serious cases. On the other hand, the increase of the prison term would change the nature of the offense from a misdemeanor to a felony, with a loss of the facility the Government now enjoys in being able to prosecute by information rather than by the more cumbersome method of proceeding by indictment (18 U. S. C. 1, *Catlette* v. *United States*, 132 F. (2d) 902 (1943)). Accordingly, it is deemed preferable to leave the general punishment at the misdemeanor level, but in cases where the wrong results in death or maiming, to provide for the greater penalty. On the civil side, as already observed in the comment on the preceding section, the existing remedies under 8 U S. C. 43 appear adequate for this section

Section 203: Provides a supplement to 18 U. S. C. 242. The intent is to provide an enumeration of some of the rights, privileges, and immunities secured and protected by the Constitution and laws of the United States, of which inhabitants shall not be willfully deprived (which is the general language of 18 U. S. C. 242), in order to overcome what seems to be a handicap at trial in the use of section 242, as recently imposed in *Screws* v. *United States* (325 U. S. 91 (1945)). Pursuant to the Screws case, the Government in order to obtain a conviction under 18 U. S. C. 242, is required to prove, and the judge must adequately instruct the jury, that the defendant has "willfully" deprived his victim of a constitutional right, which specific right the defendant had in mind at the time. Proof of a general bad purpose alone may not be enough (325 U. S. 91, 103). See more recently to the same effect, *Pullen* v. *United States* (164 F. (2d) 756 (1947)), reversing a conviction for failure of the indictment and the judge's charge with respect to "willfully."

The enumeration of rights is of course only partial, and does not purport to enumerate all Federal rights runing against officers But it is demonstrable that none of the enumeration creates any new right not heretofore sustained by the courts. The following examples are cited:

1. The right to be immune from exactions of fines without due process of law (*Culp* v *United States*, 131 F. (2d) 93 (1942)) (imprisonment by State officer without cause and for purposes of extortion is denial of due process and an offense under 18 U. S. C. 242, formerly 52).

2. The right to be immune from punishment for crime except after fair trial and due sentence (*Screws* v. *United States*, 325 U. S. 91 (1945)) (sheriff beating prisoner to death may be punishable under 18 U. S. C. 242, formerly 52); *Crews* v. *United States* (160 F. (2d) 746 (1947)) (sheriff making arrest and, without commitment or trial, causing death of prisoner by forcing him to jump into a river violated 18 U. S. C. 242, formerly 52); *Moore* v. *Dempsey* (261 U S. 86 (1923)) (conviction in State trial under mob domination is void); *Mooney* v. *Holohan* (294 U. S. 103 (1935)) (criminal conviction procured by State prosecuting authorities on perjured testimony, known by them to be perjured, is without due process).

3. The right to be immune from physical violence applied to exact testimony or to compel confession of crime, *Chambers* v. *Florida* (309 U. S. 227 (1940)) (convictions obtained in State courts by coerced confessions are void under fourteenth amendment); *United States* v. *Sutherland* (37 F. Supp. 344 (1940)) (State officer using assault and torture to extort confession of crime violates 18 U. S. C. 242, formerly 52).

4 The right to be free of illegal restraint of the person (*Catlette* v. *United States*, 132 F. (2d) 902 (1943)) (sheriff detaining individuals in his office and compelling them to submit to indignities violates 18 U. S. C. 242, formerly 52); *United States* v. *Trierweiller* (52 F. Supp. 4 (1943)) (sheriff and others attempting to arrest and killing transient, without justification, violated 18 U. S. C. 242, formerly 52).

5. The right to protection of person and property without discrimination by reason of race, color, religion, or national origin (*Catlette* v. *United States*, 132 F. (2d) 902 (1943)) (sheriff subjecting victims to indignities by reason of their membership in a religious sect and failing to protect them from group violence violates 18 U. S. C. 242, formerly 52); *Yick Wo* v. *Hopkins* (118 U. S. 356 (1886)) (unequal administartion of State law, because of a person's race or nationality,

resulting in his being deprived of a property right, is a denial of rights under the fourteenth amendment).

6 The right to vote as protected by Federal law (*United States* v. *Classic*, 313 U S 299 (1941), rehearing denied 314 U. S. 707) (violation of right of qualified voters in primary election for congressional candidate to have their votes counted, punishable under 18 U S. C. 242, formerly 52); *United States* v *Saylor* (322 U S 385 (1944), rehearing denied 323 U S 809) (right of voter in a congressional election to have his vote honestly counted is violated by a conspiracy of election officials to stuff the ballot box, and is punishable under 18 U. S. C. 241, formerly 51); *Smith* v *Allwright* (321 U. S. 649 (1944), rehearing denied 322 U S 769) (right of a citizen to vote in primary for candidates for Congress is a right which may not be abridged by a State on account of race or color, and damages are recoverable for violation under 8 U. S. C. 43).

The great majority of our people are secure in their homes, their property, and their persons under the protections extended through the offices of the State, county, and municipal authorities Police protection is generally taken for granted But an unfortunately large number of our people are not thus secure; they live in fear and distrust They fear not only their neighbors but the authorities who by law are chosen to protect them. When these authorities themselves invade their rights, or refuse to protect them against others, there is none but the Federal Government to aid them.

In the words of the President's Committee,

"Freedom can exist only where the citizen is assured that his person is secure against bondage, lawless violence, and arbitrary arrest and punishment. Freedom from slavery in all its forms is clearly necessary if all men are to have equal opportunity to use their talents and to lead worth-while lives. Moreover, to be free, men must be subject to discipline by society only for commission of offenses clearly defined by law and only after trial by due process of law. Where the administration of justice is discriminatory, no man can be sure of security. Where the threat of violence by private persons or mobs exists, a cruel inhibition of the sense of freedom of activity and security of the person inevitably results. Where a society permits private and arbitrary violence to be done to its members, its own integrity is inevitably corrupted. It cannot permit human beings to be imprisoned or killed in the absence of due process of law without degrading its entire fabric" (Report, p 6)

Section 204 amends 18 United States Code 1583, formerly 443 (see appendix A). This is a statute, enacted under the plenary power of the thirteenth amendment to the United States Constitution, punishing the kidnaping or enticing of persons for purposes of subjecting them to slavery or involuntary servitude. The amendment purports to make clear that the holding in involuntary servitude is punishable. A discussion of the doubt and the causes thereof, with respect to the existing provision, is found in 29 Cornell Law Quarterly 203. The insertion of "other means of transportation" is simply to bring the statute up to date by supplementing the word "vessel."

Insertion of the words "within or beyond the United States" was to settle any question that an enticement on board a vessel, etc., with intent that one be made a slave or held in involuntary servitude, applies within as well as outside the country.

Part 2—Protection of right to political participation

Section 211 is an amendment of section 1 of the present Hatch Act, formerly 18 United States Code 61, now 594 (see appendix A). This section of the Hatch Act presently makes punishable intimidation and coercion for the purpose of interfering with the right of another to vote as he chooses at elections for national office The purpose of the amendment is to make the provisions applicable to primary and special elections as well as to general elections for Federal office. The existing language is "any election" (for the named offices). The amendment would make it "any general, special or primary election" (for the named offices).

The Hatch Act was enacted in 1939 at a time when, due to the decision in *Newberry* v. *United States* (256 U. S 232 (1921)), there was doubt in Congress as to the constitutionality of Federal regulation of nominating primaries. This doubt was resolved in 1941, in favor of Federal power, by *United States* v. *Classic* (317 U. S. 299 (1941), 324, fn. 8). Nevertheless, in view of the legislative history, companion sections to section 1 of the Hatch Act were construed, since the Classic case, not to include primary elections, *United States* v. *Malphurs* (41 F. Supp. 817 (1941)), vacated on other grounds (316 U. S. 1). Accordingly,

the amendatory insertion, above, is necessary notwithstanding the generality of the existing language "any election," etc

Section 212 is an amendment of one of the old existing civil-rights statutes, enacted as part of the act of May 31, 1870, and which became section 2004 of the Revised Statutes (8 U S. C. 31, see appendix A) Section 2004 presently declares it to be the right of citizens to vote at any election by the people in any State, Territory, county, municipality, or other territorial subdivision without distinction as to race, color, or previous condition of servitude.

As originally drafted, it was the first section of the act of May 31, 1870, and depended upon remedies provided in other sections of that act and later acts, parts of which were held unconstitutional or repealed In order to avoid any question as to the kind of punishment or remedy which is available in vindication or protection of the stated right, the amendment inserts a specific reference to the two basic criminal- and civil-remedy provisions directed at State officers; namely, 18 United States Code 242 and 8 United States Code 43. The latter, providing civil remedies, has already been successfully applied in the past to the present statute (8 U. S. C 31) in a number of cases such as *Nixon* v. *Herndon* (273 U S 536 (1927)), *Nixon* v. *Condon* (286 U S 73 (1932)), *Smith* v. *Allwright* (321 U. S. 649 (1944)), and *Chapman* v *King* (154 F. (2d) 460 (1946)); certiorari denied (327 U S 800). There appears to be no parallel history of applying the corresponding criminal sanctions of 18 United States Code 242 to 8 United States Code 31, although in *United States* v *Stone* (188 Fed. 836 (1911)), an indictment under section 20 of the Criminal Code (18 U S. C 52, now 18 U. S. C. 242), charging that State officials acting under color of State law deprived Negroes of their vote or made it difficult for them to vote their choice at a congressional election, was sustained against a demurrer Indeed, it was not until the comparatively recent decision in the Classic case ((1941), 313 U. S 299), that the potentialities of 18 United States Code 242 in protecting voting rights became evident. 8 United States Code 43 and 18 United States Code 242 are, as stated, regarded in pari materia with respect to the nature of the offense charged (*Picking* v. *Pa. R R Co*, 151 F. (2d) 240 (1945); rehearing denied, 152 F (2d) 753)

The phrase "and other applicable provisions of law" is designed to preclude any implication that by specifying two statutory sections there is an exclusion of other sections of the criminal and civil statutes, which by operation of law and construction are part of the legal arsenal in the use of the specified sections. Thus, under existing law, the same offense under 18 United States Code 242 may, because of a conspiracy, give rise to an added count in the indictment for a violation of 18 United States Code 241 (*United States* v. *Classic*, 313 U S. 299 (1941)) (conspiracy of public officers); or a prosecution solely under 18 United States Code 241 (*United States* v *Ellis*, 43 F. Supp. 321 (1942)) (conspiracy of public officers and private individuals); or a prosecution under 18 United States Code 371 (formerly 18 U. S C. 88) and 18 United States Code 242 (*United States* v. *Trierweiller*, 52 F. Supp 4 (1943)) (conspiracy of public officers and private individuals). It is intended that these and any other such remedies shall be available

A number of changes in language have been made both in the interest of modernizing the old phraseology and closing certain obvious holes now open for construction For example, insertion of the phrase "general, special, or primary" in describing "election by the people" is intended to avoid any handicaps of earlier legislative history noted, supra, in the comment on the similar problem in connection with amending the Hatch Act.

One change in verbiage deserves special comment. The present statute speaks only of distinction of race, color, or previous condition of servitude. The words "previous condition of servitude" have been dropped as unnecessary, since the slaveholding days are far removed. In their place have been substituted the words "religion or national origin" (consistent with other nondiscriminatory provisions of this bill).

It is clear that the existing guaranty against distinctions in voting based on race or color is expressly authorized by the fifteenth amendment (*United States* v. *Reese*, 92 U. S. 214 (1874); *Smith* v. *Allwright*, 321 U. S. 649 (1944)) and is validly applicable in all elections, whether Federal, State, or local (*Chapman* v. *King*, 154 F. (2d) 460 (1946); certiorari denied, 327 U. S. 800). In addition, the present statute has been sustained under the equal-protection clause of the fourteenth amendment (*Nixon* v. *Herndon*, 273 U S. 536 (1927); *Nixon* v. *Condon*, 286 U. S. 73 (1932)), which clause also is the source for the claim that dis-

tinctions in voting based on religion or national origin are arbitrary and unreasonable classifications both as they appear in State laws (cf. *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Truax* v. *Raich*, 239 U. S. 33 (1915); *Oyama* v. *California*, 332 U. S. 633 (1948)) or in the administration of such laws (*Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886)). See also *Hirabayashi* v. *United States* (320 U. S. 81, 100 (1943)), wherein the Court recognized that, as a general rule, "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." Moreover, the instant statute deals with the right of citizens to vote, and it could easily be regarded as an infringement upon the exclusively Federal naturalization power for States to deny, or differently accord, to citizens voting rights based on the national origin of such citizens, wholly apart from the aspect of an unreasonable classification. Confer *Truax* v. *Raich* (239 U. S. 33, 42 (1915)), where the Court took the view that for a State to deny or limit aliens in the right to work in private employment would interfere with the power of Congress to control immigration.

Section 213 is designed to supplement section 211 of this part by creating civil remedies for violations of that section, and to authorize for both sections 211 and 212 of this part the bringing of suits by the Attorney General in the district courts for preventive, declaratory, or other relief. The reason for this seemingly uneven application is that 18 United States Code 594, which section 211 amends, already contains criminal penalties but has no clear civil remedy. On the other hand, section 212 has specifically rewritten 8 United States Code 31 to contain within itself references to both criminal penalties and civil remedies, since the existence of the former was not clear and the latter existed by construction. In addition, as to both sections, there is need for recognition of the right of public authority to take timely civil measures in heading off threatened denials of the right to vote.

With respect to the jurisdictional provisions, the precedents for State-court jurisdiction are cited in the analysis of part 1, section 201, supra. The need for specifically excluding regard to the sum or value of the matter in controversy, so far as the United States district courts are concerned, is also explained in the analysis of part 1, section 201, supra. No similar reference is needed in the case of suits by the Attorney General, since the Federal district courts obtain jurisdiction in a suit where the United States is a party plaintiff regardless of the amount at issue (28 U. S. C. 1345, *United States* v. *Sayward*, 160 U. S. 493; *United States* v. *Conti*, 27 F. Supp. 756, *R. F. C.* v. *Krauss*, 12 F. Supp. 4).

On the question of the need and desirability of the amendments and other provisions to be effectuated by this part of the bill, the President said in his civil-rights message to the Congress (1948):

"We need stronger statutory protection of the right to vote. I urge the Congress to enact legislation forbidding interference by public officers or private persons with the right of qualified citizens to participate in primary, special, and general elections in which Federal officers are to be chosen. This legislation should extend to elections for State as well as Federal officers insofar as interference with the right to vote results from discriminatory action by public officers based on race, color, or other unreasonable classification."

In somewhat more detail, the President's Committee on Civil Rights, recommending legislation which would apply to Federal elections and primaries, said:

"There is no doubt that such a law can be applied to primaries which are an integral part of the Federal electoral process or which affect or determine the result of a Federal election. It can also protect participation in Federal election campaigns and discussions of matters relating to national political issues. This statute should authorize the Department of Justice to use both civil and criminal sanctions. Civil remedies should be used wherever possible to test the legality of threatened interferences with the suffrage before voting rights have been lost" (Report p. 160).

And the Committee also recommended—

"The enactment by Congress of a statute protecting the right to qualify for, or participate in, Federal or State primaries or elections against discriminatory action by State officers based on race or color, or depending on any other unreasonable classification of persons for voting purposes.

"This statute would apply to both Federal and State elections, but it would be limited to the protection of the right to vote against discriminatory interferences based on race, color, or other unreasonable classification. Its constitutionality is clearly indicated by the fourteenth and fifteenth amendments. Like the legislation suggested under (2), it should authorize the use of civil and criminal sanctions by the Department of Justice" (Report, pp. 160, 161).

Part 3—Prohibition against discrimination or segregation in interstate transportation

Section 221 (a) declares that all persons traveling within the jurisdiction of the United States shall be entitled to equal treatment in the enjoyment of the accommodations of any public conveyance or facility operated by a common carrier engaged in interstate or foreign commerce without discrimination or segregation based on race, color, religion, or national origin.

Section 221 (b) makes punishable by fine (no imprisonment), and subject to civil suit, the conduct of anyone who denies or attempts to deny equal treatment to travelers of every race, color, religion, or national origin, in the use of the accommodations of a public conveyance or facility operated by a common carrier engaged in interstate or foreign commerce. Civil suits may be brought in the State courts as well as the Federal district courts.

Section 222 makes it unlawful for the common carrier engaged in interstate or foreign commerce or any officer, agent, or employee thereof to segregate or otherwise discriminate against passengers using a public conveyance or facility of such carrier engaged in interstate or foreign commerce on account of the race, color, religion, or national origin of such passengers. Violations are subject to fine and civil suit, the latter being cognizable in State as well as Federal courts.

This part is needed to both implement and supplement existing Supreme Court decisions and acts of Congress, as recommended by the President and the Committee on Civil Rights (Report, p. 170).

In a recent case, *Bob-Lo Excursion Co.* v. *Michigan* (333 U. S. 28 (1948)), the Supreme Court had occasion to consider the validity of the Michigan civil rights law applied to a steamboat carrier transporting passengers from Detroit to an island which is a part of Canada. Although the carrier was engaged in foreign commerce, the Court laid aside this aspect in view of particular localized circumstances and held that the prohibition of the State law against discrimination for reasons of race or color was valid and applicable to the carrier. Mr. Justice Rutledge, speaking for the Court said (at p. 37, note 16)—

"Federal legislation has indicated a national policy against racial discrimination in the requirement, not urged here to be specifically applicable in this case, of the Interstate Commerce Act that carriers subject to its provisions provide equal facilities for all passengers (49 U. S. C. sec. 3 (1)), extended to carriers by water and air (46 U. S. C., sec. 815; 49 U. S. C. secs 484, 905). Cf. *Mitchell* v. *United States* (313 U. S. 80). Federal legislation also compels a collective bargaining agent to represent all employees in the bargaining unit without discrimination because of race (45 U. S. C., sec. 151 et seq.) *Steel* v. *Louisville & Nashville R. Co.* (323 U. S. 192); *Tunstall* v. *Brotherhood of Locomotive Firemen & Enginemen* (323 U. S. 210). The direction of national policy is clearly in accord with Michigan policy. Cf. also *Hirabayashi* v. *United States* (320 U. S. 81); *Korematsu* v. *United States* (323 U. S. 214); *Ex parte Endo* (323 U. S. 283)."

There is little doubt as to the direction of national policy, referred to in the Bob-Lo case. Instrumentalities of interstate and foreign commerce are being cleared of the obstructing influences of discrimination and segregation. Prejudices, advantages, and discrimination have been forbidden for many years by the Interstate Commerce Act (49 U. S. C. 3; *Mitchell* v. *United States*, 313 U. S. 80 (1941)). In *Morgan* v. *Virginia* (328 U. S. 373 (1946)), the Supreme Court held that a State statute requiring segregation of the races in motor busses was unconstitutional in the case of an interstate passenger, as a burden on interstate commerce. See also *Matthews* v. *Southern Ry. System* (157 F. (2d) 609 (1946)), indicating that there is no different rule in the case of railroads.

The civil rights section has found that notwithstanding the ruling of the Supreme Court in the Morgan case, local law-enforcement officers have arrested and caused the detention and fine of Negro passengers who refused to move to a seat or car reserved for Negroes. Of the several complaints in such matters received within the past 2 years, three investigations were instituted. In each of these cases it was reported that the officers involved had violated the rights of the passengers to be free from unlawful arrest, since the officers were without authority to effect the arrest. However, in the absence of a clearly stated statutory basis for prosecution, and in view of the handicap in attempting to proceed under the limitations placed upon the existing general civil

rights laws by the Supreme Court (*Screws* v. *United States*, 325 U. S. 91 (1945)), none of these cases was prosecuted. It was determined that the officers in question probably acted without the requisite specific intent necessary to constitute a violation of the constitutional rights of the passengers under the general statutes, as required by the Screws case; rather that they were acting in ignorance and in an effort to cooperate with the railroads involved.

Proposed section 221 would remove any doubts on this score, and would declare the rights of passengers to be free of discrimination and segregation in interstate and foreign commerce on account of race, color, religion or national origin. It would put all persons, including public officers, on clear notice of the rights of passengers.

The proposed section would also make the carrier and its agents responsible for their participation in any such unlawful practices. It will be remembered that the Morgan case dealt only with State law, and not with the action of the interstate carriers themselves, *Morgan* v. *Virginia* (328 U. S. 373, 377, fn. 12 (1946)), who have continued to segregate, *Henderson* v. *Interstate Commerce Commission* (80 F. Supp 32 (1948)) (appeal pending, jurisdiction noted, ——— U. S.———, March 14, 1949; the Government will urge reversal).

In cases involving the carriers and certain segregation practices or requirements, which the court felt overstepped the bounds of existing law, the Supreme Court has stated on several occasions that constitutional rights are personal and not racial, *Mitchel* v. *United States* (313 U S. 80, 96 (1941)); *McCabe* v. *A. T. and S. F. Ry. Co.* (235 U S. 151, 161 (1941)) (see also the restrictive covenants case for enunciation of the same principle in another field, *Shelley* v. *Kraemer* (334 U. S. 1, 22 (1948)). The action of the Congress is needed to give unequivocal effect to this principle in interstate travel. As stated in the President's message on civil rights—

"The channels of interstate commerce should be open to all Americans on a basis of complete equality. The Supreme Court has recently declared unconstitutional, State laws requiring segregation on public carriers in interstate travel. Company regulations must not be allowed to replace unconstitutional State laws. I urge the Congress to prohibit discrimination and segregation, in the use of interstate transportation facilities, by both public officers and the employees of private companies."

It is submitted that passage of this part would remove all doubts on the subject and would bring to a conclusion a long process of making carrier facilities available to all without distinction because of race or color. Expensive, involved litigation has accomplished a great deal. But an express statement of congressional policy is desirable to accelerate an ending of this source of constant friction and irritation in interstate commerce.

I would like to proffer one final, general comment with regard to the whole of this proposed legislative effort. It is stated in the words of the President's committee, and I should like to make them, at this point, my own words,

"The argument is sometimes made that because prejudice and intolerance cannot be eliminated through legislation and Government control, we should abandon that action in favor of the long, slow, evolutionary effects of education and voluntary private efforts. We believe that this argument misses the point and that the choice it poses between lesiglation and education as to the means of improving civil rights, is an unnecessary one. In our opinion, both approaches to the goal are valid, and are, moreover, essential to each other.

"It may be impossible to overcome prejudice by law, but many of the evil discriminatory practices which are the visible manifestations of prejudice can be brought to an end through proper Government controls." (Rept., p. 103.)

APPENDIX A

§ 241 (18 U. S. Code) CONSPIRACY AGAINST RIGHTS OF CITIZENS

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $5,000 or imprisoned not more than 10 years, or both.

§ 242 (18 U. S. Code) DEPRIVATION OF RIGHTS UNDER COLOR OF LAW

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains or penalties, on account of such inhabitant being an alien or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

§ 243 (18 U. S. Code) EXCLUSION OF JURORS ON ACCOUNT OF RACE OR COLOR

No citizen possesing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000.

§ 594 (18 U. S. Code) INTIMIDATION OF VOTERS

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and Possessions, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 43 (8 U. S. Code) CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

§ 47 (8 U. S. Code) CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

(1) *Preventing officer from performing duties.*—If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) *Obstructing justice; intimidating party, witness, or juror.*—If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) *Depriving persons of rights or privileges.*—If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any

citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States, or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

§ 31 (8 U. S. Code) RACE, COLOR, OR PREVIOUS CONDITION NOT TO AFFECT RIGHT TO VOTE

All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

§ 41 (8 U. S. Code) EQUAL RIGHTS UNDER THE LAW

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

§ 42 (8 U. S. Code) PROPERTY RIGHTS OF CITIZENS

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

§ 56 (8 U. S. Code) PEONAGE ABOLISHED

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, as declared null and void.

§ 1518 (18 U. S. Code) PEONAGE; OBSTRUCTING ENFORCEMENT

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

§ 1583 (18 U. S. Code) ENTICEMENT INTO SLAVERY

Whoever kidnaps or carriers away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or

Whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

§ 1584 (18 U. S. Code) SALE INTO INVOLUNTARY SERVITUDE

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

APPENDIX B

The Civil Liberties Section (now Civil Rights Section) was established on February 6, 1939, for the purpose of handling all problems and supervising all prosecutions involving interference with the ballot, peonage, the strikebreaking statute, shanghaiing men for service at sea, conspiracies to violate the National Labor Relations Act, the intimidation of persons for having informed the Departments of the Government of matters pertinent to their functions, and other infringements of civil rights. On February 5, 1944, the Section was reorganized to extend its duties to enforcement of Fair Labor Standards Act, Hours of Service Act, Safety Appliance Act, Kick-back Act, Walsh-Healey Act, Soldiers' and Sailors' Civil Relief Act, and the Reemployment Section of the Selective Training and Service Act of 1940; and the name of the Section was changed to "Civil Rights Section."

During the 10 years following the establishment of the Civil Liberties Section, approximately 100,000 complaints have been received involving real or imagined civil-rights matters. Though there is some duplication of complaints involved in this figure, the vast majority of them are distinct individual complaints. Totals of mail handled in connection with pressure campaigns on particular cases are not included in this total. The Section conducts about 400 personal interviews with complainants and visitors each year. Following is a résumé of the volume of work which has been handled in the Section:

Civil rights and political cases

In 1939, three outstanding civil-rights cases were tried In addition to these, 24 persons were convicted for violation of Election laws.

In 1940, approximately 8,000 civil-rights complaints were received. Forty investigations were undertaken in connection with Hatch Act violations. Of these, 16 were completed and prosecutions were recommended in 12 cases.

In 1941, six outstanding civil-rights, Hatch Act, and Election fraud cases were prosecuted. Convictions were had in 5 cases. Grand juries returned no bills in 7 cases.

During the fiscal year of 1942, 8,612 complaints were received, 224 investigations were requested and prosecutive action was taken in 76 cases. (170 personal interviews were had with complainants.)

In 1943, nine cases of outstanding importance were prosecuted.

During the fiscal year of 1944, 20,000 complaints were received in matters concerning civil rights, election crimes, reemployment under the Selective Training and Service Act and the Soldiers' and Sailors' Civil Relief Act. 356 investigations were conducted and 64 prosecutions were undertaken during the year. 75 cases which involved the Soldiers' and Sailors' Civil Relief Act of 1940 were received.

During the fiscal year of 1945, 4,421 complaints were received and 139 investigations conducted. Prosecutions were undertaken in 32 cases. Pleas of nolo contendere were entered in 23 cases. No bills were returned in seven instances and one case was before the Supreme Court. Prosecution was undertaken in 23 Election fraud cases, and pleas of nolo contendere were entered in all 23 cases.

In the year ending June 30, 1946, 7,229 complaints were received in civil-rights and political cases. 152 investigations and 15 prosecutions were undertaken. 5 convictions were secured, 7 cases were concluded adverse to the Government and one case was before the Supreme Court. 6 election fraud cases were prosecuted and 2 convictions were secured in peonage cases.

In the fiscal year of 1947, 13,000 complaints were received, 241 investigations were instituted, and prosecutions were undertaken in 12 cases. Convictions were secured in 4 cases and 6 resulted in acquittals.

During the year ending June 30, 1948, approximately 14,500 complaints were received, 300 investigations were instituted, and 20 prosecutions undertaken.

It is estimated that 15,000 complaints will be received during the fiscal year 1949, and 300 investigations instituted.

Cases involving labor statutes

	Examined and referred to United States attorneys for prosecution	Penalties assessed
Fair Labor Standards Act cases (child labor, wage and hour, record keeping, and criminal contempt)		
1944	59	$80,123
1945	99	46,255
1946	[1] 230	222,844
1947	135	84,751
1948	79	59,488
Hours of service law cases		
1944	65	77,400
1945	49	23,100
1946	38	37,900
1947	8	6,700
1948	18	4,300
Safety Appliance Act cases		
1944	284	65,600
1945	247	23,100
1946	157	58,000
1947	114	42,900
1948	180	65,000

	Complaints received	Indictments obtained	Convictions	Penalties assessed
Kickback Act				
1944	100	6	3	$4,100
1945	35	2		
1946	9			
Walsh-Healy Act				
1944		4		
1945		1		1,500

	Cases referred to United States attorneys for prosecution	Penalties assessed
Signal Inspection Act		
1946	2	$200
1947	2	200
1948	7	400

	Cases received	Penalties assessed
Accidents report law, 1948	1	$100
Merchant seaman statute, 1948	1	

[1] Approximate

STATEMENT BY THE ATTORNEY GENERAL CONCERNING PROPOSED FEDERAL ANTILYNCHING ACT (H. R. 4683)

I appreciate the opportunity to express my views regarding H. R. 4683, a bill to provide protection of persons from lynching, and for other purposes.

In my judgment the Federal Government today has the obligation to protect its citizens, and in fact all inhabitants of the Nation, from the forcible deprivation by mob action of the right to a fair trial. It has that obligation, also, in my view, as to mob action directed against individuals by reason of their race, color, religion, or national origin. The Department of Justice has long endeavored to enforce these rights to the fullest extent possible under the provisions of existing law. But serious limitations have been imposed. In my opinion the time has come for strengthening the existing law so as to deal adequately with the entire problem of lynching.

Under the existing general statutes, notably 18 U. S. C. 241 and 242, and the general conspiracy provision, 18 U. S. C. 371, the basis exists, and the Department has used it successfully, though under certain major handicaps, to prosecute State officers and private individuals who conspire with the State officers to substitute mob violence for the lawful adjudication and punishment of crime in accordance with due process of law. (The handicaps referred to are discussed at some length in my statement concerning the proposed Civil Rights Act of 1949 (H R. 4682).) The sections of law to which I have referred (18 U S. C. 241–242; 18 U. S. C. 371) enable us to deal with part of the so-called lynching problem, and, if the general statutes are improved in the ways already suggested, our hand would be strengthened in that regard. However, this by no means meets the whole problem. It is essential that a lynching bill put the Government in a position to prosecute the members of a lynch mob, particularly where there is no element of conspiracy with local officers. These undoubtedly comprise the bulk of the present-day cases where the threat of lynching exists In addition, it is essential that the Government should not be limited to those cases where persons are taken from law enforcement officers with or without the consent of such officers. There have been far too many instances in the past of lynching or the threat of lynching in the case of persons neither charged with nor suspected of crime, but who, for economic or political reasons, have been the subject of lawless mob action because of their race, color, religion, or national origin. Such a situation is intolerable in our society. The Government must be in a position to deal with all of these situations.

Accordingly, I should like to voice my support of H R. 4683 as an antilynching measure which meets the needs of the law enforcement agencies. Consideration of the kind of bill which is to be enacted becomes particularly significant, because there are bills pending in the Congress which, though entitled antilynching measures, fall far short of the situation which must be remedied.

I would like, therefore, to summarize briefly for you the provisions of H. R. 4683 so that there is clear understanding upon what I and my Department think is essential for a Federal antilynching bill.

Section 1 gives the short title.

Section 2 contains legislative findings. I would regard these findings to be particularly useful in relation to our endeavors in world affairs Certain it is, too, that here at home we must meet the challenge of communism in the ideological field where we are best equipped; namely, in the securing of individual rights to life and liberty.

Section 3 declares the right to be free from lynching to be a federally protected right.

Section 4: As defined in this section, a lynching may be committed by an assemblage of two or more persons who are referred to as a lynch mob. Two general types of lynch mob violence form the basic offense: (*a*) That committed or attempted because of the race, color, religion, or national origin of the intended victim, or (*b*) that committed or attempted by way of correction or punishment of the intended victim, who is either in the custody of a peace officer, or who is suspected of or charged with or convicted of the commission of a criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of the victim or of imposing a punishment not authorized by law. By these indicia, it is intended to distinguish lynching from ordinary violence.

Section 5 provides punishment for two classes of persons: (1) Any member of a lynch mob, and (2) any person whether or not a member of a lynch mob who instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever The penalties are graded, so that the serious offenses resulting in death or maiming or severe property damage (as defined) may result in imprisonment up to 20 years or a fine of $10,000, or both. All other offenses may be punished by imprisonment of not more than 1 year or a fine of not more than $1,000, or both. The distinction in punishments allows for the technical differences in prosecuting felonies and misdemeanors under Federal law. Thus, a misdemeanor, an offense punishable by imprisonment not exceeding 1 year (18 U. S C. 1), may be prosecuted by information rather than by indictment (*Catlette v. United States*, 132 F. (2d) 902).

Section 6 provides punishment for peace officers who neglect, refuse, or wilfully fail to make diligent efforts to prevent lynching or to protect persons from lynch mobs or who willfully fail to make diligent efforts to apprehend or keep in custody members of a lynch mob. Subsection (a) is directed against State and municipal peace officers. Subsection (b) is directed against Federal peace officers in places where the United States exercises exclusive criminal jurisdiction.

Section 7 defines peace officer.

Section 8: Under this section, the kidnaping law is amended so as to make punishable the transporting, in interstate or foreign commerce, of persons unlawfully abducted or held because of race, color, religion, or national origin or for purposes of punishment, correction, or intimidation

Section 9 is a separability clause

The crime of lynching is a blot on our national life The facts concerning it are on record before your committee It is condemned by right-thinking people in every section of our country.

I am not unmindful, of course, that serious questions of constitutionality will be urged with regard to some of the provisions of the bill. But I am thoroughly satisfied that the bill, as drawn, is constitutional. It is true that there is a line of decisions holding that the fourteenth amendment relates to and is a limitation or prohibition upon State action and not upon acts of private individuals (*Civil Rights Cases*, 109 U S 3; *United States* v. *Harris*, 106 U S 629, *United States* v. *Hodges*, 203 U S. 1). These decisions have created doubt as to the validity of a provision making persons as individuals punishable for the crime of lynching. However, without entering here upon a discussion of whether or not these decisions are controlling or possess present-day validity in this connection, it may be pointed out that such a provision punishing persons as individuals need not rest solely upon the fourteenth amendment Upon proper congressional findings of the nature set forth in H. R 4683, the constitutional basis for this bill would include the power to protect all rights flowing from the Constitution and laws of the United States, the law of nations, the treaty powers under the United Nations Charter, the power to conduct foreign relations, and the power to secure to the States a republican form of government, as well as the fourteenth amendment

I urge that the Congress exercise its full powers to give a governmental guaranty to the foremost freedom, the freedom to live. That exercise of power will, in my opinion, be upheld by the judiciary.

Mr. Wilson, I am very happy to meet a neighbor from Schenectady.

STATEMENT OF CHARLES WILSON, CHAIRMAN, PRESIDENT'S CIVIL RIGHTS COMMITTEE

Mr. WILSON. I am Charles E. Wilson. I appear before you in support of H. R. 4682, an omnibus civil rights bill, which is directed primarily at strengthening existing Federal civil rights laws and establishing more adequate government machinery for the enforcement of these laws. The President's Committee on Civil Rights devoted a good part of its time during its investigations in 1947 to the careful examination of the existing program of the Federal Government for the protection of the liberties which are basic to our free way of life.

It was deeply impressed by the progress which this Government has made in recent years in providing a real measure of protection for these rights. In particular, it was impressed by the achievements of the Department of Justice which, through its Civil Rights Section, and the FBI, has demonstrated conclusively that a democratic government can take positive steps to safeguard the rights of its citizens. But at the same time the committee was also impressed by the tentative makeshift character of the machinery through which this work has been carried on and by the sketchy and often obsolete laws upon which this governmental program has been built.

Convinced as the committee was of the value of this activity, it is not surprising that the first of its recommendations called for the strengthening of the machinery for the protection of civil rights.

The bill now before your committee, Mr. Chairman, follows closely the suggestions which we offered in our report. In the first place, we were convinced that the Civil Rights Section of the Department of Justice should be raised to the status of a division and placed under

the direction of an Assistant Attorney General. Only by this step did we feel that this law enforcement unit of our Government could gain the facilities and the prestige necessary to the achievement of its purposes. At the same time we felt that the FBI, which performs the investigative work in cases involving civil rights violations, should be given additional personnel for this purpose and encouraged to provide its agents with more highly specialized training for the difficult and unique problems which confront them when they are assigned to civil rights cases.

Secondly, we recommended the creation in the executive branch of the Government of a permanent advisory commission on civil rights to report at regular intervals to the President on the state of our liberties. We were impressed in our own work by the enormity of the subject and by our own inability to investigate thoroughly all aspects of the civil rights problem. Inevitably, in investigating certain phases of the subject, we were able to do little more than scratch the surface. Other areas were slighted altogether.

Accordingly, there is much work that remains to be done by such an advisory commission.

Moreover, it was clear to us before we completed our labors that the examination of the conditions of civil rights in America must be made a continuous process. Thus it seemed of first importance that a permanent commission should be established to act as a vigilant watchdog of our liberties. It seemed wise that such an agency should be created entirely separately from any law-enforcement machinery in the civil-rights field and given the continuing assignment of making a calm, careful appraisal of our policies and practices with respect to civil rights and of calling the attention of the Nation at regular intervals to the weak spots in the record and to the need for further protection.

Similarly, it seemed appropriate to suggest that the Congress itself establish a standing joint House-Senate committee to provide in the legislative branch of the Government parallel machinery to the commission on the executive side. Such a joint committee could appraise the recommendations of the executive commission and of the President and also initiate independent legislative studies of civil-rights problem. Together, these two agencies could keep a careful watch over our liberties, discover remaining weaknesses in our policies and practices, and suggest further means to bring us closer to the goal of full civil rights for all Americans.

Those sections of the bill before you which undertake to correct the deficiencies of the laws now being enforced by the Department of Justice follow very closely the recommendations contained in the report of the President's Committee on Civil Rights. Many of these connections are technical in character and I will not try to analyze them in detail or to set forth the reasons why the Civil Rights Committee urged their adoption. It is sufficient to say that in varying forms these statutes have been part of the law of the United States for three-quarters of a century. In that time they have repeatedly met the test of constitutionality and they have withstood periodic action by Congress revealing civil-rights legislation considered unwise and unworkable. They have been successfully enforced in a wide variety of cases.

In short, they have proved their value. At the same time, they have in that long period become increasingly inadequate and archaic. Today they are badly in need of a thorough legislative overhauling by Congress so that, to borrow the words of the United States Supreme Court, they may serve their great purpose, the protection of the individual in his civil liberties. I understand that the bill before you would correct him of these deficiencies by extending the coverage of these laws so that all persons would be protected by them. By correcting faulty penalty clauses, including the strengthening of the civil as well as the criminal acts for the enforcement of these laws. By providing protection against the wrongful acts of individuals as well as against conspiratorial, and by enumerating some of the specific rights protected so that the victim and oppressor alike would be forewarned that the rights named as such are subject to the protection of the Federal Government.

All of these changes seem sensible to me and I hope the Congress will approve them. It is worth noting that these existing Federal civil rights statutes, while they have been successfully applied in recent years, have not been used to make the Central Government a policeman over the everyday activities of the American people or to usurp the proper and necessary duty of State and local governments to provide the first line of defense for our American civil liberties.

Instead, the record shows that in the main they have been used with wisdom and restraint to protect civil rights only where the States and communities have been unable or unwilling to provide necessary safeguards. If we now modernize these statutes, we can make them effective twentieth century tools for the protection of civil rights.

There is no reason to suppose that the revision of these laws will lead the Department of Justice to show any less restraint or common sense in their use than it has in the past. In addition to these changes in existing laws, the bill before you would enact new Federal legislation forbidding the racial segregation of travelers in interstate commerce.

I strongly recommend that this legislative step be taken. Segregation is one of our Nation's greatest social problems and it will not be solved overnight. But it seems peculiarly appropriate that in the channels of interstate commerce, the control of which has been the express power and responsibility of the Federal Government for more than a century and a half, racial segregation should be outlawed without further delay.

It is now nearly 2 years since the Civil Rights Committee submitted its report to secure these rights to the President. In that time the report has admirably fulfilled at least one of the purposes which the committee had in mind for it, namely, that it might stimulate a great public discussion of the civil-rights problem and bring about a renewed understanding of our historic American traditions of individual freedom and a stronger determination that our practices be made to match our principles. With your permission I should like to make three observations growing out of this debate.

First, I should like once more to invite a careful reading of the civil-rights report by all Americans. It is not a perfect document at all. Honest men may well disagree concerning many of its specific

recommendations. Yet I have always felt that in reviewing the principles of freedom for which this Nation stands and in pointing the way forward to a fuller realization of our historic goals the report offers a calm, carefully reasoned discussion which should answer many of the honest fears that have been expressed by the critics of a Federal civil-rights program.

Second, I should like to say a specific word concerning the assertion so often made that we cannot legislate civil rights, the assertion that civil rights can only be won by private voluntary action, by educational means rather than by Government means.

In my opinion, legislation and education both have vital and necessary roles to play in the safeguarding of our civil rights. As a stanch advocate of private enterprise and individual initiative and freedom, I have never been one to urge the enactment of unnecessary laws as the way to solve our problems. But to argue that human conduct can never be controlled or bettered through the enactment of laws is to miss the meaning of history.

Those who have read the civil-rights report know that it does not suggest that the attack upon the civil-rights problem should be made exclusively through laws. In the report we said:

> Government alone, whether Federal, State, or all combined, cannot provide complete protection of civil rights. Everything that government does stems from and is conditioned by the state of public opinion. Civil rights in this country will never be adequately protected until the intelligent will of the American people approves and demands that protection.
>
> Great responsibility, therefore, will always rest upon private organizations and private individuals who are in a position to educate and shape public opinion.

That is the end of the quote. But the report then adds:

> The argument is sometimes made that because prejudice and tolerance cannot be eliminated through legislative and government control we should abandon that action in favor of the long, slow evolutionary effects of education and voluntary private efforts.

We believe that this argument misses the point and that the choice between legislation and education as to the means of improving civil rights is an unnecessary one.

In our opinion, both approaches to the goal are valid and are, moreover, essential to each other. Frankly, I have urged great dependence on educational and voluntary private effort to condition the way to civil-rights progress, even to the point of stressing the preferability of this process to legislate in the long term.

Nevertheless, I regard the extent of legislation contemplated by this bill as highly essential.

Finally, I should like to comment on the time factor in dealing with this problem. Some of the critics of the civil-rights report have suggested that it asks for too much too fast. Admittedly we are faced here with a social problem which is not going to be solved overnight. It would take a miracle indeed if we were to win a final and complete victory next month or even next year in the century-old battle to give every member of our society full civil rights.

For example, no responsible person can demand that after two centuries and more of slavery, oppression, and unequal opportunities, the American Negro be absorbed overnight into the main streams of our national life. Yet anyone who absorbs this civil-rights problem,

as did the members of the President's committee, cannot fail to be impressed by the terrible urgency of time and the compelling need for immediate action for prompt progress.

Above all, the state of the world in which we live dictates that we make every human effort to close the gap between our ideals and our practices at once so that we may stand before the peoples of the earth not only as a symbol of the freedom and individualism that may one day come to be but as a living demonstration that democracy has been made to work in America.

Mr. BYRNE. That is an excellent statement. Is there anything further you wish to add?

Mr. WILSON. No, sir.

Mr. BYRNE. Do you have anything further, General?

Attorney General CLARK. No, sir; I do not.

Mr. CELLER. I want to state that I think a real compliment is due Mr. Wilson and his colleagues who compose the President's Committee on Civil Rights for their painstaking work. I wish to state that I read your brochure and I found it most instructive. I commend it to everyone who is interested in civil rights.

Mr. KEATING. I would like to say, Mr. Chairman, that I have read the report of the distinguished committee headed by their chairman and believe that they have performed a great public service in the fine work that they have turned out.

I compliment you and the other members of your commission on a calm, deliberate, but forceful work in a field that to my mind has been too long neglected.

Mr. CELLER. I think we must also offer our unstinted praise to the Attorney General, who has come here today from a busy program. We have heard him give, very cogently, his views on the bill I have offered.

Mr. KEATING. I am very glad to add my comments in that regard also.

Attorney General CLARK. Thank you, gentlemen. It is good to be here.

Mr. BYRNE. Ladies and gentlemen, is there anyone else in the room who wishes to be heard upon any part of this program?

If not, we will adjourn subject to the call of the Chair.

(Whereupon, at 12 noon the subcommittee was adjourned, to reconvene at the call of the Chair.)

ANTILYNCHING AND PROTECTION OF CIVIL RIGHTS

WEDNESDAY, JUNE 22, 1949

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 3 OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The committee met at 11:15 a. m., Hon William T. Byrne (chairman of the subcommittee) presiding.

Mr. BYRNE. The committee will come to order.

Gentlemen, we are ready now to take your testimony. We have here a schedule of witnesses. The first witness is Dr. Samuel McCrea Cavert, general secretary, Federal Council of Churches.

We will be happy to hear you.

STATEMENT OF DR. SAMUEL McCREA CAVERT, GENERAL SECRETARY, FEDERAL COUNCIL OF CHURCHES

Dr. CAVERT. My name is Samuel McCrea Cavert. I am general secretary of the Federal Council of Churches of Christ in America.

I appear in behalf of the Federal Council of the Churches of Christ in America, which is a federation of 27 national denominations with a combined membership of more than 28,000,000.

The position which the council has continuously supported for 15 years is set forth in an official resolution of its executive committee on March 23, 1934, expressing the conviction that "national legislation is a moral necessity to bring the Federal Government into prompt and effective cooperation with the State and local authorities in the prevention of lynching and the prosecution of lynchers."

The executive committee of the council, on March 16, 1948, authorized the presentation of testimony at congressional hearings on the basis of this resolution. In accordance with the regular practice of the council which permits any denomination to disassociate itself from any position with which it may not be in full agreement, I make record of the fact that the Presbyterian Church in the United States (Southern) is not included in this presentation.

The council's support of antilynching legislation centers around the basic moral and spiritual principle that every person is entitled to protection of life and liberty, regardless of racial or national background. As the churches said in their official declaration on human rights adopted at the biennial meeting of the council in Cincinnati last December:

> All of the rich gifts which God imparts to men should be available to all without discrimination as to race, color, sex, birth, nationality, social or economic status or creed.

Applying this principle to concrete problems, the statement defines the basic human rights to which all are entitled as including—

> Freedom from * * * mob violence and intimidation—

and the right, when charged with crime, to a fair and just trial according to recognized law. On this point the statement clearly affirmed that there should be—

> equal rights before the law, which include police protection, the right of an accused person to a fair and public trial, the right to counsel, the right to be confronted by written indictment, evidence, and witnesses against him, the right to present in his own behalf his own witnesses and evidence, the right to have the judgment of his actions depend upon an evaluation of the facts by an impartial jury of his peers.

I confine my testimony to these clear moral considerations, derived from the religious faith which the people of our Nation profess. I do not enter into any discussion of the administrative provisions of the bills before you, since on these points the churches have no special competence, but I cannot too strongly emphasize the conviction that the continuance of lynching presents a great moral challenge to our Nation and requires effective legislative action.

The ultimate remedy, as in the case of other moral problems, lies not in legislation but in the development of the conscience of the people. We believe, however, that the enactment of a Federal antilynching law would set a needed standard and serve as a deterrent to irresponsible groups in any community. Such action is urgently necessary not only as an expression of the national conscience but also for the sake of the good name of the United States in the eyes of the world.

If we fail to put our house in order with respect to such an elemental matter as the right to protection of life under due processes of law, we shall play directly into the hands of those who are today attacking the American way of life. To set up every possible safeguard against lynching is a part of the front-line defense of our democracy.

My official duties include rather extensive contacts with religious leaders in other lands, especially in Europe and in Asia. Through many years I have found that the fact of lynching is one of the most widely publicized things about the United States among other peoples, and one of the things that does most to lower our prestige abroad. Other people simply cannot understand why, if we really believe in justice and law, as we profess, we do not as a Nation do something about the flagrant disregard of justice and law which goes under the name of lynching.

I have never forgotten, if I may cite a single illustration, what Rabindranath Tagore, the famous Indian poet, said to me 30 years ago after he had made a visit to this country. He said:

> Do you really think that there is any ethical or spiritual superiority in the civilization in which lynchings occur year after year and yet the National Government is indifferent to it?

I had no answer to that question. I had none then and I have none now. I hope that you will help to provide an answer.

The General Assembly of the United Nations recently adopted a universal declaration of human rights. In securing that action our own country, we may broadly say, has played a distinguished role, but, Mr. Chairman, our real leadership as a Nation in the field of human rights will depend not so much on what we write into such a document as this but on what we do to provide an example of vigorous concern for human rights. I know of no more important and strategic point at which to begin than to put our Government on record as determined to remove the blot of lynching from our national escutcheon.

Thank you, sir.

Mr. LANE. Dr. Cavert, as secretary of the Federal Council of Churches, would you be kind enough to tell me how many churches make up the council?

Dr. CAVERT. There are 27 national denominations, which include approximately 150,000 local congregations.

Mr. LANE. And those congregations are from all over the United States?

Dr. CAVERT. Oh, yes.

Mr. BYRNE. North, south, east, and west?

Dr. CAVERT. North, south, east, and west. I should add that the strength of the council is perhaps not quite so great in the South because one numerous body in the South does not belong to the council, since on general principles it is not particularly concerned about cooperation with other churches.

Mr. BYRNE. Is that the Baptist or the Methodist?

Dr. CAVERT. The Southern Baptists.

Mr. BYRNE. Known as the South Baptists?

Dr. CAVERT. That is right.

Mr. BYRNE. Have they joined the North Baptists?

Dr. CAVERT. No.

Mr. BYRNE. The Methodists have.

Dr. CAVERT. Yes.

Mr. BYRNE. The Methodists of the South and the Methodists of the North are now united?

Dr. CAVERT. Yes.

Mr. DENTON. Are those the southern missionary Baptists?

Dr. CAVERT. The official name is the Southern Baptist Convention. You are thinking about another organization.

Mr. LANE. How many people would be represented by your Council of Churches?

Dr. CAVERT. Between 28 and 29 million.

Mr. LANE. You are speaking for that entire group?

Dr. CAVERT. I am recording the official position of the council which it has taken through the delegated representatives of this entire group, with the exception which I noted of one of the southern churches which asked not to be included in this presentation.

Mr. LANE. Is there a substantial membership in your association of churches from the South?

Dr. CAVERT. Oh, yes; with the exception of the Southern Baptists.

Mr. BYRNE. We will now hear from Elmer W. Henderson, Director of the American Council on Human Rights. You are the director of it?

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STATEMENT OF ELMER W. HENDERSON, DIRECTOR, AMERICAN COUNCIL ON HUMAN RIGHTS

Mr. HENDERSON. I am.

Mr. BYRNE. You may proceed, Mr. Henderson.

Mr. HENDERSON. Gentlemen, I have the honor to represent the American Council on Human Rights, a cooperative program of seven national fraternities and sororities dedicated to seek the extension of fundamental human and civil rights to all citizens of our country and to secure equality of justice and opportunity to all without discrimination because of race or religion.

The American Council on Human Rights fully endorses the Civil Rights Act of 1949 and urges you to report it favorably for speedy action on the floor of the House of Representatives. This bill can be passed by the House before adjournment this summer, and we hope you will conduct your deliberations with that aim in view.

The arguments for the passage of this legislation have been set forth with great cogency in the report of the President's Committee on Civil Rights. This document, released nearly 2 years ago, has been discussed and debated throughout the length and breadth of the land. It has been endorsed by the overwhelming majority of the people. Those who have opposed it have been, for the most part, hysterical and unreasoning. They have sought to play upon the fears and prejudices of groups in certain sections of the country rather than meet this problem squarely. I hope the members of this committee will not be swayed from your solemn duty by that dwindling minority of racists and bigots.

The objectives of this bill have been recommended either explicitly or implicitly in the 1948 platforms of both major parties. Civil rights was a prime issue in the election of the President and of many Congressmen and Senators. The results of the election indicated that the voters of this country want action, such as proposed here, to bring our day-by-day practices in line with our democratic professions. Speaking for at least one part of them, we are disappointed that so little action has been taken by the Eighty-first Congress to date.

We are heartily in favor of parts 1 and 3 of title 1 of H. R. 4682 on the creation of a Civil Rights Commission in the executive branch and Joint Congressional Committee on Civil Rights. We are particularly interested in part 2 of title 1, which will reorganize the civil-rights activities of the Department of Justice. In our judgment, these activities are of such importance and demand such specialization that they should be incorporated in a Civil Rights Division under an Assistant Attorney General. Unfortunately, the civil-rights activities of the Justice Department are currently languishing because the Attorney General has not seen fit to appoint a chief of the Civil Rights Section, a vacancy nearly 9 months old. We do not know the reason for this, but we feel the post should be filled as soon as possible.

Under title 2, we are glad to see the civil-rights statutes of the United States strengthened. There has been no question but that the Federal authorities have been handicapped in the investigation and prosecution of many cases because the statutes are ineffective and ambiguous. The pending bill seeks to deal with this and spells out specific immunities the invasion of which will warrant Federal action.

There should be no controversy over these points. They are already implicit in the law. The courts, however, have been reluctant at times to allow prosecution unless the specific immunity was spelled out. What objection could there be to spelling out the following:

Section 242A:

(1) The right to be immune from exactions of fines, or deprivations of property, without due proces of law.

(2) The right to be immune from punishment for crime or alleged criminal offenses except after a fair trial and upon conviction and sentence pursuant to due process of law.

(3) The right to be immune from physical violence applied to exact testimony or to compel confession of crime or alleged offenses.

(4) The right to be free of illegal restraint of the person

(5) The right to protection of person and property without discrimination by reason of race, color, religion, or national origin.

(6) The right to vote as protected by Federal law.

Part 2 of title 2 which deals with political participation is a vital and much needed section. It is common knowledg that in many areas of the South interference with the right of Negroes to vote is frequent and widespread. Just 2 years ago in Georgia, where a recent brutal lynching took place, a Negro veteran was shot down in cold blood because he dared to vote. Such impertinence could not be tolerated by the shabby apostles of white supremacy in that county. The late Senator Bilbo of Mississippi took to the radio the night before election and called on the white people of that State to stop Negroes from voting any way they could. A senatorial investigation of that incident was made. I may say, Mr. Chairman, that lynchings, beatings, the Ku Klux Klan, and all of the other bold and subtle tactics they are using are not going to stop our people from voting in the South. We are not afraid. We will not be intimidated. The enactment of this section will hasten the coming of democracy to the South.

Part 3 deals with segregation in interstate transportation. Here is an area that is wholly and solely Federal. Interstate travel is regulated by Congress and the Interstate Commerce Commission. There is no reason why facilities should not be available to all people who pay their fares without discrimination or segregation. The segregation that currently exists on trains and busses is degrading and humiliating to my people. It should be outlawed. We have just one suggestion regarding this section. The word "terminals" should be incorporated to remove any doubt that they are covered.

We hope, Mr. Chairman and gentlemen of this subcommittee, that you will act to report this bill favorably to the full committee and that the full committee will act likewise and report the bill favorably to the House of Representatives, where action can be taken in a reasonable length of time on the floor of the House.

Mr. LANE. What was done by the local authorities in the shooting of that colored veteran in Georgia?

Mr. HENDERSON. As I recall—and I might say the respresentative of the National Association for the Advancement of Colored People, Mr. Perry, is here and can speak with great authority on that particular case—an investigation was made, not only by the Federal Bureau of Investigation but by the Georgia Bureau of Investigation. I am almost reasonably certain that no corrective action was taken, and none of the people who were involved were ever prosecuted.

Mr. LANE. What is the American membership of this organization that you represent called the American Council on Human Rights?

Mr. HENDERSON. We have a little over 50,000.

Mr. BYRNE. Is it made up mostly of graduates of colleges and schools?

Mr. HENDERSON. It is, Mr. Chairman.

Mr. BYRNE. I notice that you have a number of Greek-letter societies.

Mr. HENDERSON. Yes.

Mr. LANE. Do you have your locals throughout the entire country?

Mr. HENDERSON. We have 1,200 locals throughout the country.

Mr. LANE. Where are those locals located?

Mr. HENDERSON. In nearly every State in the Union, and certainly in nearly every large city of the Union.

Mr. DENTON. College fraternities?

Mr. HENDERSON. They are, sir.

Mr. LANE. Do you have some located in Georgia?

Mr. HENDERSON. Yes; a number are located in Georgia.

Mr. BYRNES. Thank you very much.

Mr. HENDERSON. Thank you very much, Mr. Chairman, for this opportunity to testify.

Mr. BYRNE. We will now hear from Mr. Mike Masaoka.

You represent the Japanese-American Citizens League Antidiscrimination Committee.

STATEMENT OF MIKE MASAOKA, REPRESENTING THE JAPANESE AMERICAN CITIZENS LEAGUE ANTIDISCRIMINATION COMMITTEE

Mr. MASAOKA. I do, sir.

Mr. Chairman, my statement is rather lengthy, so, with your permission, I would like to summarize it and hold myself open for questions.

Mr. BYRNE. Yes. We will include your statement in the record at this point.

(The statement referred to is as follows:)

STATEMENT OF THE JAPANESE AMERICAN CITIZENS LEAGUE ANTIDISCRIMINATION COMMITTEE FOR THE BYRNE SUBCOMMITTEE ON H. R. 4682, COMMITTEE ON THE JUDICIARY

During World War II, persons of Japanese ancestry in the United States were the victims of the greatest violation of civil rights in American history.

Therefore, as the only national organization representing persons of Japanese ancestry in this country, the Japanese American Citizens League (JACL) and its antidiscrimination committee (ADC) believe that we have the duty—as Americans interested in the preservation of the American way—to emphatically endorse such legislation as this in the hope that no other individual or segment of our population will ever again be forced to suffer and sacrifice as we did, whether because of race, color, religion, or national origin.

We are of the opinion that H. R. 4682, a bill to provide a means of further securing and protecting civil rights of persons within the jurisdiction of the United States, is a significant contribution to our hopes.

Because of our own wartime experiences, we are well aware of the great implications in this legislation for all Americans, and particularly those whom color, religion, or national origin have set apart.

For this reason, we believe that our testimony can be most useful to this committee if we direct our discussion to our own recent vicissitudes, with the view

of demonstrating that legislation of this nature might have prevented our wartime treatment as a racial group.

Mr. Justice Frank Murphy of the United States Supreme Court declared that our evacuation and detention bore a "melancholy resemblance" to the treatment of the Jews in Nazi Germany, and the American Civil Liberties Union described our experiences as "the worst single wholesale violation of the civil rights of American citizens in our history."

The President's Committee on Civil Rights, in its epochal report, summarized "the wartime evacuation of Japanese Americans" as follows:

"The most striking mass interference since slavery with the right to physical freedom was the evacuation and exclusion of persons of Japanese descent from the west coast during the past war. The evaluation of 110,000 men, women, and children, two-thirds of whom were United States citizens, was made without trial or any sort of hearing, at a time when the courts were functioning. These people were ordered out of a large section of the country and detained in 'relocation centers.' This evacuation program was carried out at the direction of the commanding general of the west coast command, who acted under an Executive order, authorizing the Secretary of War and the military commanders to prescribe military areas from which any person or group could be excluded.

"The ground given for the evacuation was that the military security of the Nation demanded the exclusion of potentially disloyal people from the west coast * * * But we are disturbed by the implications of this episode so far as the future of American civil rights is concerned. Fundamental to our whole system of law is the belief that guilt is personal and not a matter of heredity or association. Yet, in this instance no specific evacuees were charged with disloyalty, espionage, or sedition. The evacuation, in short, was not a criminal proceeding involving individuals, but a sort of mass-quarantine measure. This committee believes that further study should be given to his problem. Admittedly in time of modern total warfare much discretion must be given to the military to act in situations where civilian rights are involved. Yet, the committee believes that ways and means can be found of safeguarding people against mass accusations and discriminatory treatment.

"Finally it should be noted that hundreds of evacuees suffered serious property and business losses because of governmental action and through no fault of their own."

Although the President's committee did not directly relate its recommendations for legislative remedies to our evacuation, it is our considered judgment that, had the provisions of title I of H. R. 4682 been in effect, 110,000 of us would not have been arbitrarily made wards of the Government because of our alleged "affinity" to the enemy.

The President's committee frankly admits that it did not investigate the background of facts that led up to the evacuation. Two books—Prejudice, Japanese Americans: Symbol of Intolerance, by Carey McWilliams (Little, Brown & Co., 1945) and Americans Betrayed, by Morton Grodzins (University of Chicago Press, publication date, July 1, 1949)—however, trace in documented detail how race prejudice, not military security, forced American citizens to be herded into concentration camps; how, for the first time in our history, American citizens were openly deprived of their civilian rights because of their race; how the antiorientalists in California, in the hate and hysteria of war, were able to exploit bigotry, jingoism, and racism in the guise of patriotism to subvert the basic tenets of democracy.

In addition, the Final Report of the War Relocation Authority (WRA—A Story of Human Conservation, Department of Interior, 1946), created by the President to supervise our relocation, in declaring that mass evacuation was not justified, examines each of the arguments advanced by the Commanding General of the Western Defense Command and rejects each of them as unfounded in fact

All this, as well as our personal experiences both in evacuation and with Government, convinces us that had there been an active and aggressive Civil Rights Commission in the executive branch of our Government, a sincere and working Civil Rights Section in the Department of Justice with real powers to implement their findings and recommendations, and a continuing and functioning Joint Congressional Committee on Civil Rights, the evacuation of 1942 would not have taken place.

We believe a primary consideration which prompted the President to issue his Executive order and the Congress to enact implementing legislation authorizing the evacuation was that so little was known of us generally throughout the

United States. The American public at large had always considered us a "west coast problem" because more than 90 percent of all persons of Japanese ancestry prior to the outbreak of war resided in the three Pacific Coast States. Of this number, more than 65 percent were concentrated in California.

Thus, when it was essential that information be had concerning our loyalty and allegiance to this country, the President and the Congress naturally turned to their west-coast sources and associates.

Unfortunately, these sources were, in the main, either prejudiced or misguided.

Had there been a Presidential Commission on Civil Rights functioning at that time, the executive departments could have received first-hand on-the-spot information.

Had there been a working Civil Rights Section in the Department of Justice, this Section would have been able to release its information, gathered after careful investigation, about the Japanese-American minority in America and the myths of sabotage and espionage at Pearl Harbor.

Had there been a joint congressional committee which visited California, Oregon, and Washington before the evacuation orders were announced, Congress would not have accepted the alleged necessity for enabling legislation.

This assumes, of course, that the members of the Presidential Commission, the Civil Rights Section, and the joint committee are honest and sincere advocates of civil rights for all, regardless of the exigencies and consequences of the moment.

In other words, we trust that had these various official bodies been in existence in the spring of 1942, they would have uncovered all the facts that are now known and available. Armed with this knowledge, we are confident that neither the President nor the Congress would have authorized the wholesale and arbitrary eviction and incarceration of 110,000 human beings, two-thirds of whom were American citizens

Moreover, it is our belief that, had there been such a law as the Civil Rights Act of 1949 on the statute books before the war, those who selfishly fomented hate and prejudice against persons of Japanese ancestry would certainly have been restrained in the fear that their nefarious activities would be exposed and condemned by official Federal intervention.

We persons of Japanese ancestry know what it means to be the victims of unreasoning emotion, to be citizens without status, to be suspect by our own Government, to be confined because we are considered dangerous to the security of our own country and then later to be informed that we were interned for our own safety—protective custody, it was called.

Because we have experienced these un-American and un-democratic manifestations of a grave emergency, we are doubly concerned lest in some future crisis other Americans who can be arbitrarily classified by one standard or another may be forced to suffer indignities and humiliations.

This is the reason we feel so strongly about this legislation.

Ignorance breeds fear—ignorance of the facts, of other people, of the necessity for extending human rights to all, at all times, in all places. It was such ignorance that created the fears that culminated in our wartime treatment

Because we are convinced that education on a continuing basis is essential to the implementation of this legislation, we advocate that each of the three bodies that would be established under this measure maintain a complete investigative staff as well as a continuous public information program.

All three official agencies should investigate every possible field where civil rights may be in jeopardy and then, on the basis of the facts, either independently or in cooperation with the other bodies, proceed to eliminate the tensions to the end that the civil rights of those involved will be secure.

At the same time, we wish to cautaion that, unless Americans of the highest caliber are appointed to serve on these three basic groups, they may become mere rubber stamps to destroy all civil rights in another great emergency.

The real test of the merit of this legislation will be in times of grave crises, when great issues and strong men clash.

Since we have discussed in some detail our convictions that had the facts been known evacuation would not have taken place, may we commend to this committee the reading of Americans Betrayed, which we shall file with our statement. The author, Morton Grodzins, is an assistant professor of political science at the University of Chicago. He spent 3 years collecting the evidence which today reveals the prejudices, the pressures, and the politics that framed the evacuation necessity.

We believe that a study of this basic research will demonstrate the need for legislation of this type which will set up investigative agencies in two of the

three branches of Government to preserve and protect the civil rights of all.

So much for title I, which provides for strengthening the Federal Government machinery for the protection of human rights by (1) establishing a commission on civil rights in the executive branch of the Government, (2) reorganizing the civil-rights activities of the Department of Justice, and (3) creating a joint congressional committee on civil rights

Title II, with provisions to "strengthen the protection of the individual's rights to liberty, security, citizenship, and its privileges," by (1) amending and supplementing existing civil-rights statutes, (2) by protecting the right to political participation, and (3) by prohibiting discrimination or segregation in interstate transportation, is also of real concern to all persons of Japanese ancestry.

We are interested in legislation protecting our person and property without discrimination by reason of race, color, religion, or national origin.

For we know too the fear of threatened mob violence and vigilantism, of having our homes and properties burned by arsonists, of unwarranted search and seizures. We know what happens when local law enforcement breaks down and local prejudices mete out local notions of justice.

It is not hard for us to recall the case of a Japanese-American technical sergeant, for example. A Purple Heart veteran of the fighting in the Pacific who will be afflicted with malaria the rest of his life, he returned to his home in northeastern California wearing the uniform of the United States Army. Parties unknown shot at him from ambush; parties unknown burned down his house. The local police officers weren't interested in seeking out the criminals

Other similar cases during the return to the west coast of evacuees in 1945 went unsolved.

We understand that this legislation authorizes the Federal Government to intervene where civil liberties are threatened, to protect the life, limb, and property of every person irrespective of his race, color, religion, or place of residence. If this is correct, we are confident that mob violence will become a matter of the past and that the administration of law and of justice in all sections of the United States will become more uniform and equitable.

The subject of political participation is especially close to us at this time.

As members of this committee know, the House has passed two bills this session which extend the privilege of naturalization to our alien Japanese parents who, under existing law, are considered "ineligible to citizenship" We are hopeful that the Senate will concur in this action which recognizes that in a democracy such as ours all persons should be encouraged to participate in their own government through the exercise of franchise.

Just as we believe that all immigrants who have adopted this country should be permitted to become naturalized citizens, so we contend that all citizens should be privileged to cast their ballot, that American citizenship should be first-class citizenship for all Americans regardless of race, color, religion, national origin, or place of residence.

We persons of Japanese ancestry appreciate the value of the vote, for it was not so long ago that efforts were made in both the courts and the Congress to revoke our American citizenship. Accordingly, we are in favor of any legislation that will assure all citizens an equal opportunity to qualify and to vote in any and all elections, local as well as State and National.

As for the prohibition against discrimination or segregation in interstate transportation, as a matter of human dignity, we endorse this provision, too While we persons of Japanese ancestry are not now the subject of discrimination or segregation in interstate transportation, we know well the meaning of the terms "discrimination and segregation because of race, color, or national origin."

A few years ago, separate schools were maintained in California for Japanese-American children. Separate swimming pools, separate sections in theaters, and other separate facilities were our lot and life. Certain restaurants, hotels, and accommodations refused our patronage.

Even today, many cemeteries insist that persons of Japanese ancestry be buried in separate plots. Indeed, in Chicago, St. Paul, and Denver, for example, Japanese-American soldiers who were killed in the defense of these United States have been denied burial facilities.

Thus, out of our recent experiences, we have learned what it means to be a second-class citizen, a suspect individual because of an accident of birth. We learned by bitter experience that much of what we underwent has been the tragic lot and life of many Negroes for decades in the South. We learned that Mexican-Americans, Jewish-Americans, Chinese-Americans, and even the American Indian, among others, have faced discrimination because of their race, color, religion,

or national origin. We have begun to appreciate that only in defending the rights of others can we protect our own.

This is why we join today with all Americans of good will in urging the early and favorable consideration of legislation of this kind, for we know now that until every American can enjoy all the rights, privileges, and immunities of our heritage none of us can share fully in our way of life.

These are days of hope for persons of Japanese ancestry in the United States.

Seven short years ago, we were behind the barbed-wire fences of concentration camps. No other minority in American history had ever been reduced to such a lowly status.

Today, seven short years later, we have returned to resume our normal way of life. The courts have invalidated or rendered ineffective most of the discriminatory State laws that were enacted against us during wartime and even some that were put on the statute books long before the war. Several State legislatures have repealed restrictive measures that were directed against us. The last Congress passed several corrective and remedial bills, including one providing for the reimbursement of some of our evacuation losses. Should the Senate approve House-passed legislation this year to provide the privilege of naturalization to our alien parents, persons of Japanese ancestry will more nearly than ever before enjoy equal status in American life.

Our future in this America of ours appears bright and promising. We look into the coming years with confidence For our recent experiences have shown us that America, and the democratic way of life, can correct its mistakes, can overcome its shortcomings and inconsistencies.

Our experience has been that once the facts are known and the implications appreciated, democracy can and will function for the greater good of all.

We believe that H. R. 4682 will serve to further the American way, will strengthen democratic processes, by making more secure the civil rights of all Americans everywhere in the land.

Important as this measure is nationally, we must not lose sight of the international implications of this legislation

Today, the free peoples of the world are looking to the United States for leadership and guidance in these confused and chaotic days. They are examining our record, our professions, our actions, to determine whether we are able to square our principles with our practices. This measure is a positive answer to their questions; its enactment will demonstrate that we mean what we say and say what we mean when we speak of equality in and under the law for all people, irrespective of race, color, creed, or national origin.

To the peoples of the world, civil rights are synonymous with human rights.

If the United States is to be the champion of human rights throughout the world, it must not deny to some within its own jurisdiction those civil rights that measure the difference between existing and living.

More than 80 chapters and committees of the Japanese American Citizens League in 38 States and the District of Columbia, in the furtherance of our national slogans: "For Better Americans in a Greater America" (JACL), and "Equal Rights, Equal Opportunities for All" (ADC), join in urging the enactment of this legislation which extends the American principle of equal justice under law to all Americans.

Submitted by:

MIKE MASAOKA,
National Legislative Director.
Japanese American Citizens League Anti-Discrimination Committee.

Mr. MASAOKA. I would like to say at the outset my principal reason for appearing before your committee is to try to indicate simply that there are many other minority groups in the United States that are concerned with this type of legislation other than the Negroes and the Jews. For example, my own group, which, although relatively small, perhaps suffered as much persecution during the last war as any other group in our history.

As you gentlemen are well aware, because the House took cognizance of our position, during the last war without trial or hearing 110,000 human being, two-thirds of whom were American citizens, were summarily removed from California and made Government wards and placed in concentration camps.

We believe had there been legislation of this type on the books, had there been the type of commissions provided for under title I of Mr. Celler's bill, that evacuation would not have taken place.

We believe, for example, that if, within the executive department of the Government, there had been a civil rights commission, that civil rights commission would have made an on-the-spot investigation of the facts relating to persons of Japanese ancestry, and then because the executive department would have had the real facts, the real knowledge, they would have been in a better position to inform the President, the Justice Department, and so forth, as to our loyalty and as to our allegiance. Had there been a strong, active, aggressive civil rights section in the Justice Department, we are confident over a long period of time they could have investigated the facts and would have been able to reveal those facts to the Congress and the President, and moreover, they would have been able to explode the myths regarding sabotage at Pearl Harbor; myths which, in a large measure, were responsible for creating the hysteria which caused our evacuation.

Finally, had there been a joint congressional committee able to go out to California and the west coast and investigate the real facts, we believe that Congress would not have passed the enabling legislation which resulted in our incarceration.

Thus, from our own experience, we believe that it would be very helpful.

As to the other facets regarding immunity from various types of searches and seizures and lynchings, again I would like to point out that we persons of Japanese ancestry know, because of our own experience, what it means to have local law enforcement break down; to have local justice meted out simply on a local basis because of prejudices.

We recall very specifically the case of Sergeant Cosma Sakamoto, a bemedaled veteran of World War II, who, during the invasion of Guadalcanal was seriously injured. He was returned to the United States, and while still wearing the uniform of the United States Army, he attempted to return to his home. Parties unknown fired upon him, even though he wore the uniform of the United States. Parties unknown burned down his home. Nothing was done by the local police officials or anyone else in that community to apprehend the criminals. Not only that, a little later on, hoodlums jumped a number of Japanese-American war veterans hospitalized at a United States Army hospital. When the hoodlums were caught they confessed, but the local jury said, "Well, they are just Japs," and nothing was done about it.

We believe, therefore, from our own experience, as well as from the experience of the Negroes and the Jews and the other minorities in this country, that legislation of this type will help to make the enforcement of the law, as well as the meting out of justice, more uniform throughout the United States for the security of all.

Beyond that, I would like to talk briefly on the aspect internationally. Because I am a person of Japanese ancestry I think that I know one of the real motives behind the Japanese propaganda during World War II. Because of the wartime treatment of the Japanese-Americans in this country, Tojo, the Japanese militarist, as well as the German propagandists, were given their most potent weapon in pointing out that the United States was fighting a race war.

We here in the United States, even though we are of Japanese ancestry, volunteered for service in the United States Army in order to break down that lie.

One of the principal reasons for which we thought—and I was one of them with four other brothers—was that here in America all persons, irrespective of their race, color, or creed, or national origin, would be treated as an individual. We volunteered, gentlemen, from behind the barbed wire fences of a concentration camp within which our own Government had placed us, and we volunteered because we had faith in the American way; that we believed when the facts were known America would try in its democratic processes to correct its mistakes. We have found that to be true.

This Congress, as you know, has passed legislation which compensates us in part for the evacuation losses. They have passed other kinds of remedial legislation. We would like to tell that story to the rest of the world, but that story of democracy correcting its own mistakes will not be complete until we have legislation of this type and other civil-rights legislation on our books.

Today we are engaged in a war, actually a war of ideologies, and there are two-thirds of the people of the world concentrated in Asia. The people of Asia must be convinced that America means what she says and says what she means; that we practice what we preach. This kind of legislation will go a long way to prove that. Thus, this important legislation is vital to us now, to us nationally as well as internationally, and therefore, gentlemen, we, on behalf of the Japanese-Americans as well as millions of other minority members—Chinese-Americans, Spanish-Americans, and other small minorities—request the indulgence of this committee and urge that there be favorable legislation of this type.

For the record I would like to submit a book which demonstrates very clearly how hysteria was fomented against the Japanese-Americans. I believe it would be interesting for study by the committee, particularly its staff, so you can find out how this thing developed. I believe it will show very clearly how commissions of the various types to be established under title I of this legislation would take care of that kind of situation.

Mr. BYRNE. That may be accepted as an exhibit rather than put in the record. We are very thankful to you for your contribution.

I would like to ask you this question: Since the people of our country have quieted down and appreciate the value of the service that you and your colleagues and fellow compatriots rendered our country, there has been a reaction very satisfactory to you; is that not so?

Mr. MASAOKA. That is very true, sir. I think it points up very significantly this factor: That the American people are just. In the long run, given the facts without hysteria or prejudice, they tend to do the right thing. I think that this legislation would tend to point that up, namely, to give the American people and the Congress the facts in every situation. Therefore, I think this will help other groups as we have been helped by the introduction of facts.

Mr. BYRNE. The service of you and others, particularly in Italy and other places, brought a great wave of high satisfaction to the people of the so-called——

Mr. MASAOKA. Second-generation Japanese. The second-generation Japanese are called nisei. The first generation Japanese were called issei, which is a term for identification. They are the first generation of Japanese who, by law, cannot become citizens of the United States. We, the nisei, are the American-born citizens of the United States. The term is simply one of classification and identification.

Mr. BYRNE. What education have you had, for the record?

Mr. MASAOKA. I was educated in Salt Lake City, Utah, and I received my degree from the University of Utah in Salt Lake City.

I might say for the record that of our own group approximately 25 percent of the Japanese-Americans in the United States attended college and have received college degrees, so that the educational qualifications of our group are very high. In spite of that, however, as with other minority groups, some discrimination has been shown simply because of our race, color, creed, or national origin.

Again I say that I think this kind of legislation will help to correct that situation.

Mr. BYRNE. That was a very fine statement.

We will now hear from Mr. Will Maslow, general counsel, American Jewish Congress.

STATEMENT OF WILL MASLOW, GENERAL COUNSEL, AMERICAN JEWISH CONGRESS

Mr. MASLOW. I represent the American Jewish Congress, a national organization of about 100,000 Jews, which has been in existence since 1916. One of its purposes is to fight to protect the civil rights of all groups in this country.

We regard the comprehensive Civil Rights Act, H. R. 4682, as a magnificent piece of legislation. In many ways we think it is one of the most important civil-rights measures before the Congress.

Too often we have been concerned merely with enacting substantive legislation and not really being concerned with the problem of enforcement. While we regard bills like the antilynch law and the poll tax as important measures, to our mind they are not as important as this bill, so well conceived and so well drafted, which seeks to overhaul the machinery of the Federal Government and really protect our civil rights.

The significant thing about this measure is that it does not in any way involve questions of State rights. This bill merely seeks to protect those rights which are now guaranteed by the Constitution and by the Federal statutes. By and large it creates no new rights. It is also significant that each of the six major portions of the bill were specifically recommended by the President's Committee on Civil Rights.

Speedy enactment of this measure, in our opinion, would do more to eliminate some of the abuses than any other legislation before Congress.

The bill is composed of two parts. The first part creates a permanent Commission on Civil Rights, which would have a supervisory-investigative function. This Commission would yearly, I presume, assess our civil rights throughout the country. It would give a balance sheet to the Nation and tell us in which direction we are going and what further legislation is necessary. Its mere existence and the possibility of investigation would in itself be a deterrent to improper action.

The second portion of title I would enlarge the Civil Rights Section of the Department of Justice. That section today is manned by only seven lawyers. It seems this is only a token enforcement by the United States. We cannot really be serious and say we are concerned with the enforcement of civil rights throughout the country when seven lawyers are all this Government, with a budget of almost 40,000,000,000, devotes to the problem of civil-rights enforcement. These lawyers, lodged in a tiny section of the Department, have no original offices; no means of independent investigation; must transact most of their business by correspondence.

This bill would have this section transformed into a division of the Department of Justice headed by an Assistant Attorney General, and thus would get the stature and the appropriations and would become a real important arm of the Department.

The third portion of the first title creates a joint congressional committee very much like our Joint Committee on Atomic Energy, so there could be one central place in the legislative branch where there would be studied continuously the problem of civil rights, instead of having bills scattered over a half-dozen committees.

This committee would, likewise, have the power of subpena, and therefore, if there were further lynchings, if there were violations of the right to vote, it would be this committee that would be the watchdog of the Congress, not of the executive branch, and they could step in.

The second portion of the bill seeks to amend some of the statutes which have been on our books since 1866. Our civil-rights statutes represent now a hodgepodge of material. Some of it is obsolete. Some of it has been repealed. Some of it has been whittled away by Supreme Court decisions, so today we really need a renovation of these statutes.

What this bill does by and large are the following:

First of all, it extends the protection of the civil-rights laws, not only to citizens but all inhabitants of the United States.

Secondly, it prevents interference with civil rights by private persons as well as by State officers. Too often private individuals have been able to get off scot free because our existing statutes are aimed at governmental action.

Third, it allows persons who have been injured, maltreated, discriminated against, and so on, to bring a private action for damages, injunction, and so on, and this provides a very useful alternative to the existing criminal machinery of the Department of Justice.

Fourth, this bill seeks to correct some of the ambiguity of the civil-rights laws which troubled the United States Supreme Court when it had before it the famous Crees case.

You will remember that was the decision involving the Georgia sheriff who killed a Negro in his custody. What the Supreme Court was puzzled by was the lack of a definition of what is a Federal right, what is a right guaranteed by the Constitution? Is the right to live itself a Federal right?

What this bill seems to spell out and make precise are Federal rights, and thereafter when a sheriff kills a prisoner in his custody we no longer can have the argument that that sheriff does not know that he is depriving this person of his right to a fair trial, which is a Federal right.

Lastly, and perhaps most important, these bills allow the Attorney General of the United States, himself, to bring action for injunction and for declaratory judgments. In the past they have been inclined to rely on criminal prosecution, the most difficult way of enforcing any statute. In addition to the reluctance of a grand jury to indict and the difficulty of getting conviction, all the protection that is afforded by a criminal trial, the Attorney General has been forced to act after the event. This bill would now authorize him to seek injunctions in the courts so that when a State enacts a statute which on its face is unconstitutional and which seeks to deprive a large part of our citizens from voting, the Attorney General could seek to enjoin the enforcement of that statute before elections and not after elections.

The next thing the bill does is that it clarifies the Federal right of suffrage. That right, as you know, is based upon two provisions in our Constitution: One, the fifteenth amendment, which forbids a State to deny suffrage because of race, color, or creed; and, secondly, there is the document itself, the Constitution, without specific provision, which guarantees the Federal right to vote and authorizes the Federal Government to protect this right from interference—interference not only through corruption or violence, but also because of racial or religious reasons.

If this bill were enacted you would have for the first time a comprehensive delineation of this important Federal right.

Lastly, the sixth provision of the bill forbids segregation in interstate commerce, whether by act of State government, by regulations of private carriers, or the action of individuals.

The law today, according to the most recent decision of the United States Supreme Court in *Morgan* v. *Virginia*, is that a State cannot, by its legislation, aid in the enforcement of a Jim Crow regulation of a carrier because such regulations and such enforcement were a burden upon interstate commerce.

The result was that many of the carriers simply enacted regulations of their own so that for all practical purposes the Negro is still being segregated in dining cars and the other coaches of our trains.

This bill seeks to eliminate segregation in interstate commerce.

The argument has often been made that no one is injured because the physical facilities are equal. That was the argument in the Supreme Court in the famous case of *Plessy* v. *Ferguson*, decided in 1896. The Court at that time held to compel a Negro to ride in a segregated train imputed no inferiority to him. It said that the inferiority was only in his own mind. Events have shown how wrong that Supreme Court decision was.

Today, in the South, if a white man is compelled by mistake to ride in the Jim Crow car, he can bring an action for damages and can recover because the southern courts recognize, and properly so, that to compel a white man to ride in a Negro portion of the car is a humiliation and lowers the social standing; so whether or not these facilities are equal, and most often they are not, there is a degradation and humiliation.

In the South if a white man is referred to as a Negro in the press or otherwise, he is entitled to bring an action for libel, and the courts have held it is libel per se just as much as to call him a Communist or a murderer.

These decisions are correct, in my opinion, and that is why this bill seeks to eliminate that degradation and that humiliation in interstate commerce, in an area within the concern and jurisdiction of the Federal Government.

We regard this bill as a comprehensive measure which would attack the problem on all fronts. We urge you to report it out favorably and to seek a vote on the House floor at this session of Congress.

Mr. BYRNE. Thank you very much.

STATEMENT OF WILL MASLOW, GENERAL COUNSEL, AMERICAN JEWISH CONGRESS

BRIEF SUMMARY OF AJC STATEMENT ON CIVIL RIGHTS ACT OF 1949

The American Jewish Congress supports the proposed Civil Rights Act of 1949. Each of its six parts is aptly designed to achieve objectives which have the support of all persons who believe in effective enforcement of established constitutional guaranties

The six parts each incorporate recommendations of the President's Committee on Civil Rights None of them raises any question as to State rights since each provides for action which can properly be taken, and only be taken, by the Federal Government.

Many of the rights which are, without question, guaranteed by our Constitution are at present denied on a wide scale largely because of the faults in the applicable statutes and the inadequacy of the civil-rights machinery of the Government Consequently, the present bill is necessary in order to prevent the increasing feeling of frustration and contempt toward the Constitution For these reasons, the American Jewish Congress believes that the Civil Rights Act of 1949 is as important as any other civil-rights bill pending in Congress

The American Jewish Congress was organized in part "* * * to help secure and maintain equality of opportunity for Jews everywhere and to safeguard the civil, political, economic, and religious rights of Jews everywhere * * *" Our movement recognizes fully that equality of opportunity for Jews can be secured only in a democratic society.

It is recognized throughout the world that the Constitution of the United States contains the broadest kind of guaranties of democracy. Its sweeping commands of equality establish a firm basis for true freedom

To the extent that democracy is incomplete today in America, it is because the precepts of the Constitution are not everywhere fully implemented. Millions of Americans still suffer discrimination and persecution at the hands of officials and fellow citizens in plain viloation f their rights. Vigorous action on the part of the Federal Government to make the Constitution a reality at all times, in all places, and for everyone is one of its principal duties.

H. R. 4682, the proposed Civil Rights Act of 1949, is designed to achieve fulfillment of that duty Each of its six parts is devoted to effectuation of accepted constitutional principles They have other points in common Each was recommended in the report of the President's Committee on Civil Rights, issued in October 1947. None raises any question as to State's rights. Each provides for action which can properly be taken and only be taken by the Federal Government With the possible exception of the last part, which prohibits segregation in interstate commerce, no part of the bill establishes rules of substantive law which are not already uniformly accepted.

It is for these reasons that the American Jewish Congress supports H. R. 4682 and urges its approval by this subcommittee It is as important as any other civil rights bill pending in Congress Speedy enactment will be applauded by all those who believe that the Federal Government has failed in past years to fulfill its obligation to enforce the democratic commands of our Constitution.

We turn now to an analysis of the specific provisions of the bill. It contains preliminary findings and two titles, each of which is divided into three parts. The three parts of the first title contain provisions to strengthen the machinery of the Federal Government for the protection of civil rights The three parts of the second title contain provisions to strengthen protection of individual constitutional rights and privileges

The findings contained in section 2 are all-inclusive and recognize, inter alia, that, as we have noted, "the succeeding provisions of this act are necessary for the following purposes: (1) To ensure the more complete and full enjoyment by all persons of the rights, privileges, and immunities secured and protected by the Constitution of the United States, and to enforce the provisions of the Constitution"

1. A permanent Commission on Civil Rights

Title I, part 1 (secs 101–103) would establish a permanent Commission on Civil Rights consisting of five members on a per diem basis and authorized to employ a full-time staff director and other necessary personnel. It would be directed to gather information concerning social and legal developments affecting Federal civil rights, to appraise the enforcement program of the Federal Government with respect to civil rights, and to study the activities of both Government officials and private individuals which adversely affect civil rights It would make reports of its findings to the President at least once a year It would not have power to compel the attendance of witnesses, and it may be assumed that its hearings would be informal.

This part follows the recommendation of the President's Committee on Civil Rights for "the establishment of a permanent Commission on Civil Rights in the Executive Office of the President, preferably by act of Congress" (Rept. of the President's committee, p 154). In the emotionally charged field of civil right, such a commission could make it possible to decide publicly debated questions on the basis of fact rather than fancy It would continue the valuable work of the earlier committee established by the President.

The bill would limit the commission's activity to matters "affecting the civil rights of individuals under the Constitution and laws of the United States." Thus there is no doubt that the establishment of the Commission is an appropriate Federal activity.

It is possible that the Commission's work would be hampered by lack of the power to subpena witnesses However, it is probably as well to withhold that power for the present and extend it to the Commission only if it appears to be necessary and desirable.

2 Reorganization of the civil rights activities of the Department of Justice

Title 1, part 2 (secs 111–112) would create a new assistant attorney generalship and direct that enforcement of Federal civil rights be undertaken by a separate division of the Department of Justice. It would also direct the Federal Bureau of Investigation to give specialized training to its agents in the civil rights field.

According to our most recent information, the staff of the present Civil Rights Section of the Department of Justice contains no more than seven lawyers This small group is responsible, not only for civil rights cases, but also for enforcement of several other unrelated statutes It is impossible for it to supply the bold initiative or speedy and effective action which the Federal Government must display in order even to begin the large task ahead.

Elevation of the Section to the status of a separate Division would make the necessary large-scale action possible. The Division would be headed by an Assistant Attorney General, who would, presumably, be a person of national reputation. As a Division it would necessarily receive an appropriation substantial enough to increase the present limited staff to a size more nearly adequate to its tasks. It could also establish regional offices, as recommended by the President's Committee on Civil Rights.

Enactment of other civil-rights legislation, such as an antilynching bill, will be an idle gesture unless the provisions of this part are also enacted. It is worse than useless to pass laws which cannot be enforced because of insufficient personnel. Such action breeds contempt for the law in question and of all other law. Congress should see to it that it acts effectively and responsively in this important sphere.

The need for specialized training of FBI personnel was stated in the following words by the President's Committee on Civil Rights: "The tendency of FBI agents to work in close cooperation with local police officers has sometimes been detrimental to the handling of civil-rights investigations. At times, these local officers are themselves under suspicion. * * * In ordinary crime-detection work it is highly desirable for the FBI to cooperate closely with the local police. Having in general established such a wholly sound relationship, it is sometimes difficult for the FBI agent to break this relationship and to work with, or even against, the local police when a civil-rights case comes along."

3. A Joint Congressional Committee on Civil Rights

Title I, part 3 (secs. 121–126), provide for a Joint Congressional Committee consisting of seven Members from each House It would be the committee's function to study matters relating to civil rights and the means of improving respect for and enforcement of these rights. It would advise with the various congressional committees dealing with legislation relating to civil rights. Unlike the proposed Commission, the joint committee would have power to compel the attendance of witnesses at its hearings.

It is probably unnecessary to advise this agency of Congress about the purposes which such a committee would serve. It is necessary to say only that the widespread defiance of the Constitution by important parts of the population is long overdue for the public attention which a congressional investigating committee could bring to bear on it.

4. Revision of civil-rights statutes

It is now generally recognized that the civil-rights statutes originally passed to enforce the guaranties of the thirteenth, fourteenth, and fifteenth amendments have been so weakened by repeal and amendment that they do not provide adequate sanctions for protection of civil rights. The weaknesses of the present laws are analyzed at length in the report of the President's Committee on Civil Rights at pages 114–119.

The provisions of title II, part 1, of H R 4682 (secs. 201–204) are designed to correct these defects by making the following changes among others: (1) The bill would extend protection to all persons in the United States, whereas some parts of present statutes apply only to injuries to citizens; (2) deprivation of civil rights by a private individual would be a crime, whereas at present private action is a crime only if it is part of a conspiracy; (3) increased penalties would be imposed where the wrongful deprivation of civil rights resulted in a death or maiming; (4) to avoid the problems raised by the Supreme Court decision in *Screws* v. *U. S.*, 325 U. S. 91 (1944), some of the rights which the statute protects are carefully spelled out; (5) persons injured by violations of these sections would have the right to sue for damages in the Federal district courts.

The jurisdiction for this part of the bill is simple. There should be no right without an adequate remedy The statutory sections as amended by the bill would still deal only with rights established independently by the Constitution. No government can allow its authority to be flouted by unconstitutional conduct which it is helpless to check.

5. The right to vote

The Federal Government has general power under the Constitution to prevent interference with the right to participate in the selection of Federal officials, whether by voting in primaries or general elections in which Federal officers are to be chosen or otherwise. In addition, the fifteenth amendment specifically forbids interference by any State with the right to vote in State elections on the ground of race or color, and the fourteenth amendment more generally requires all States to grant all persons equal protection of the laws.

To ensure full freedom to vote in accordance with these guaranties, title II, part 2, of the bill (secs. 211–213) provides civil and criminal sanctions for their violation. Section 211 would amend 18 U. S. C. 594 so that interference with the right to vote in Federal primaries as well as in Federal general elections would be a crime.

Section 212 would amend 8 U S. C. 2004, which penalizes interference with the right to vote in State elections based on race or color. In addition to making this section applicable to State primaries, the bill extends application to interference based on religion or national origin.

Section 213, together with the last sentence of section 212, would permit persons aggrieved by a violation of the other sections to sue for damages in Federal courts. It would also empower the Attorney General to sue for preventive or declaratory relief.

It is common knowledge that efforts are being made in several States to prevent or limit voting by Negroes by "qualification" statutes which make it easy for State officials to discriminate against Negroes. The intention to discriminate is frankly admitted. In fact, actual discrimination was amply proved in the recent proceeding in which a Federal court held that the so-called Boswell amendment in Alabama was unconstitutional. The provisions of this part are aptly designed to meet this problem.

We particularly commend the provision for injunctive action by the Attorney General It should not be necessary to depend on individual citizens to undertake the difficult and expensive task of proving and preventing wholesale discrimination in the exercise of this basic right. The Federal Government should act and it should have effective laws under which to act.

It is a sad fact that up to now protection of basic civil rights has been left almost exclusively to private agencies acting under inadequate legislation. The Federal Government has rarely acted except by prosecuting deprivations of civil rights which take the form of murder, maiming, or other violence. The great strides made in recent years toward reaffirming the principles of the Constitution—in prohibiting the white primary, in halting enforcement of racial restrictive covenants on land, in gradually eliminating the practice of excluding Negroes from State graduate schools, in slowly and painfully moving toward equalization of the salaries of Negro and white school teachers, and in prohibiting racial discrimination by unions—all these and other victories have been achieved by legal proceedings instituted and prosecuted at enormous expense by private groups.

There is no reason whatever why the Federal Government should not accept its manifest responsibility to act in its own name to prevent violation of its laws. In those cases where criminal proceedings are not feasible, injunctive relief should be sought by the Government itself.

6. Segregation in interstate commerce

Title II, part 3 (secs. 221–222), would forbid discrimination against and segregation of any person in any interstate carrier because of race, color, religion, or national origin. Such discrimination and segregation would constitute a criminal offense whether engaged in by carriers, Government officials, or private citizens. In addition, aggrieved parties would have the right to sue for damages and for preventive or declaratory relief.

The Supreme Court has held that segregation in interstate commerce may not be required by State law (*Morgan* v. *Virginia*, 328 U S. 373 (1946)). Hence, the practice is now being continued by the southern carriers of their own volition. It seems probable that they would welcome the opportunity to eliminate it. The duplication of facilities which it requires is extremely burdensome and cannot profit the carriers or promote interstate commerce in any way.

Yet it is natural that each individual carrier is reluctant to break away by itself and initiate an important change. Legislation by Congress requiring all carriers to abandon segregation simultaneously would make it easy for each carrier to act.

Such a step would have profound effect. Nonsegregated carriers running throughout the country would be an excellent demonstration that democracy and equality are not dangerous.

The time-worn argument that segregation does not imply inferiority has been refuted so often that we need not dwell on it here. It is sufficient to say that the courts of the South have no such delusion. They have regularly held that white persons who have been compelled to ride in Negro coaches have suffered humiliation and mortification so great as to warrant the award of damages (*Louisville and N. R. Co.* v. *Ritchel*, 148 Ky. 701, 147 S. W. 411 (1912); *Missouri K. & T. Ry. Co. of Texas* v. *Ball*, 25 Tex. Civ. App. 500, 61 S. W 327 (1901); *Chicago R. I. & P. Ry. Co.* v. *Allison*, 120 Ark. 54, 178 S. W. 401 (1915)).

Requiring Negroes to ride in separate coaches is undoubtedly to place a stamp of inferiority on them. The Federal Government should no longer tolerate this offensive practice in the public conveyances which are peculiarly within its jurisdiction under the Constitution.

Respectfully submitted.

WILL MASLOW,
General Counsel, American Jewish Congress, New York.

JOSEPH B. ROBISON,
Of counsel.

JUNE 22, 1949.

We will now hear from Mr. Herbert M. Levy, the American Civil Liberties Union.

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STATEMENT OF HERBERT M. LEVY, STAFF COUNSEL OF THE AMERICAN CIVIL LIBERTIES UNION

Mr. LEVY. My name is Herbert M. Levy. I am staff counsel of the American Civil Liberties Union, and I am appearing here on its behalf in support of H. R. 4682, the omnibus proposed Civil Rights Act of 1949.

The passage of this bill would be the strongest possible blow that Congress could strike against communism, for the most effective propaganda of the Communists is that, while this country prates about freedom and civil liberties, it does nothing about them. Communists at home and abroad, who are cynically in favor of civil liberties for themselves and no one else, would be rudely shaken by a congressional act to strengthen the civil liberties of all. It is time for America to prove that she believes in freedom and that she will do something about it.

We have been in existence for 30 years defending the civil rights of all without any discrimination whatsoever. We will defend anyone whose civil rights have been violated. We think that there is too much talk about civil rights as being something new. Civil rights are something as old as our Constitution itself, and all that this bill does is to seek to provide practical machinery for enforcing the Constitution of the United States.

After the listing of certain findings, the bill, in its effort to strengthen the civil rights of the people as guaranteed by the Constitution and the United Nations Charter, provides, in title I, the machinery for such strengthening.

Part 1 of title I would create a permanent Commission on Civil Rights in the executive branch of the Government, whose function it would be to gather information on civil liberties, appraise governmental and private action in connection therewith, and annually report its findings and recommendations.

The importance of such a commission cannot be overemphasized. The American Civil Liberties Union feels that last year's presidentially appointed ad hoc Committee on Civil Rights, both through its study of civil-liberty problems and the tremendous educational value of its findings and recommendations, contributed invaluably toward the strengthening of our constitutional guaranties of freedom. There can be little doubt of the urgency and desirability of having such a commission on a permanent basis.

Part 2 of title I provides for the reorganization and strengthening of the civil-rights activities of the Department of Justice. The need for such a reorganization is patent to anyone with knowledge of the Department's activities. Handicapped by insufficient funds and the scarcity of personnel, the Department is rarely ever able to initiate civil-rights prosecution. The seven attorneys whose job it is to take care of civil rights all over the country frequently have to go to the United States attorneys in various parts of the Nation and insist they bring prosecution. Such prosecutions can be brought and brought successfully as was evident by a recent prosecution in Florida, but they cannot be done to the extent necessary with the limited facilities at the disposal of the Department of Justice at the present time. The strengthening of that Department is long overdue.

Part 3 of title I wisely supplements the Commission's activities by providing for a congressional Joint Committee on Civil Rights to study the field with a view toward legislating to improve respect for an enforcement of civil rights. The committee is given subpena powers.

The establishment of such a committee to investigate ways to further our freedom of speech, religion, and press is a necessary counterbalance of the House Un-American Activities, whose inevitable tendency has been to restrict those very same freedoms.

I think one great function that such a committee could perform would be of this nature—when the Un-American Activities Committee, as it recently did, performs such acts as to demand from the colleges a list of all the textbooks used in their courses, when Congressman Ober, of Maryland, who passed the notorious Ober bill down there, attempts to get two professors of his alma mater fired because of their political views, the alma mater being Harvard, and the only support for one demand for discharge being that the professor in question spoke in opposition to the Ober bill at a legally called political meeting—when that sort of thing happens, I think that it would be the function of this joint committee to investigate the entire field to see what other attempts have been made to impose censorship upon our colleges and schools. It would be their function to see how many alumni demand that colleges admit only a certain number of Jews, or a certain number of Negroes, or a certain number of Italians, as a prerequisite to their getting gifts from these alumni.

It would also be interesting to note how many politicians, legislators, lobbyists go in and try to influence universities such as Harvard in the selection of the books and the choice of personnel.

This discussion with Mr. Ober was made public only after several months of correspondence. My hunch would be there are probably many and frequent instances of such things occurring.

The substantive provisions of the bill are to be found in title II; part 1 thereof consists of amendments and supplements to existing civil-rights statutes found in the Criminal Code, title 18.

Section 241 (a) of that code now provides that—

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same—

such conduct is criminal.

Section 201 of the proposed act would change the word "citizens" to "inhabitant of any State, Territory, or District," and thus desirably extend the classes of persons protected and make the language of this section coincide with that of section 242.

While the desirability of such an extension is obvious, it would be unfortunate if this attempt to widen the applicability of the bill resulted in some cases in its narrowing.

Thus, it is conceivable that one who is a citizen but is not an inhabitant of any State, Territory, or District might be deprived of his rights, and the bill would unfortunately remove this protection. This can be remedied by changing lines 17–18 of page 10 to "any citizen or inhabitant of any State, Territory, or District."

It is only fair to add that this morning I appeared before the Senate subcommittee on the Judiciary Committee, and Senator McGrath took me to task on that and claimed any person even sojourning in the United States for a day, 2 days, or a few hours, would come under the legal definition of "inhabitant," and thus remove the objection that I have made here. I agreed with him if such were the clearly manifested congressional intent, we would completely abandon the suggestion, but the word "inhabitant" unfortunately has been very seldom construed by the courts, and I think that the colloquy between myself and Senator McGrath this morning, plus what I am saying now, would remove any doubt as to the intent of this bill.

The last part of the present section 241 (a) is left unchanged. The substitution in the bill of the word "of" for the word "or" of the present bill is obviously a misprint. This error occurs in line 24, page 10, of H. R. 4682.

It renders criminal the going of two or more persons in disguise on the highway, or on the premises of another, with intent to prevent or hinder the free exercise or enjoyment of a right or privilege so secured.

The bill then would add two valuable new subsections to section 241.

Subsection (b) would make an individual guilty of criminal conduct if he performed alone the acts already criminal under subsection (a) if he has performed them in concert with another.

This remedies an obvious defect in the existing law, since acts when criminal when performed by two should not be considered innocent because performed by one.

Subsection (c) is most valuable, as it gives the persons whose civil rights have been violated a private right to a civil action for damage or other relief. There is a need for this law. Only recently it was held in *Hardyman* v. *Collins* (80 F. Supp. 501), that those who were threatened with beatings by many because of their attempt to run an orderly political meeting, had no right to sue their assailants for a violation of the civil-rights law. Much obscurity surrounds the present aspect of their rule, as a reading of the opinion makes obvious. Subsection (c) would dispel the clouds. It should also be added that the congressional power to enact the rule of subsection (c) was reaffirmed in that very case.

Mr. BYRNE. We will have to adjourn now because there is a roll call on the floor of the House. We will meet again this afternoon at 2:30.

AFTERNOON SESSION

(The subcommittee reconvened at 2:30 p. m., pursuant to recess.)

Mr. DENTON. Mr. Levy, would you want to go ahead? Mr. Byrne will be here in a few minutes. It is unfortunate we have to interrupt you this way.

STATEMENT OF HERBERT M. LEVY, STAFF COUNSEL, AMERICAN CIVIL LIBERTIES UNION—Resumed

Mr. LEVY. I understand the problems.

When we adjourned for the morning session I believe that I was reading a dispatch from the New York Post concerning itself with the difficulties of prosecuting the Klan under State law in Alabama.

I think it is best if I possibly read this again, with your indulgence.

The headline was "30 KKK 'probers' are Klansmen; 'leak' of police plans aids terrorism."

BIRMINGHAM, June 18.—Most members of the sheriff's force, whose duty it is to halt the hooded night riders of the Ku Klux Klan here, either are Klansmen or sympathizers, the Post Home News learned today.

Sheriff's deputies, working with special State investigators, it was also disclosed, are letting the movements of the State agents get back to the Klan chieftains, as the terrors of the KKK lash gripped Jefferson County for the ninth straight day.

Four State investigators have been working here the last few days under pressure of Bankhead Bates, State public-safety director, who has said "there is no room for mob rule in Alabama."

Of the 50 deputies on the sheriff's force, at least 30 admit they sympathize with the KKK. Most even admit to membership in the Klan.

Sheriff Holt McDowell says he's never been a Klansman and denied any knowledge of Klan sympathies among his deputies.

However, last June, the sheriff publicly approved a raid by the hooded night riders on a Girl Scout camp near Birmingham where white scoutmasters were training Negro scout leaders. He said at the time, "It's a good thing it happened."

The dispatch goes on to add that the American Legion is organizing opposition against this. I submit that if we reach a stage where law enforcement breaks down in Alabama, so that you have the American Legion pitted in actual battle against the Ku Klux Klan, I think it is time for the Federal Government to step in and do something about it, and I think this bill is the ideal thing for the Government to do. Rather, have the Government enact this bill and give a basis for later Government action.

Section 202 of the bill would amend the present section 242 of the Criminal Code to increase the punishment of one who deprives another under color of law of his rights, privileges or immunities, or subjects an inhabitant to different punishments because of his race, color, or being an alien, when such conduct results in death or maiming.

I might also add that again the word "inhabitant" is used in section 202, where possibly the words "inhabitant or citizen" should be used, as I mentioned earlier today.

Section 203 of the bill would add a new section 242A, defining six of the rights, privileges, and immunities referred to in section 242, thus adding much clarity to the bill.

Very possibly the rights, privileges, and immunities referred to in section 241 are further defined by this section, but it is not at all clear that that is being done. I think that is something that bears further consideration. I understand that some of the later speakers will talk to that.

Section 204 of the bill would add to title 18, United States Code, section 1583, dealing with involuntary servitude, a provision that whoever "holds" a person in involuntary servitude is guilty of a crime and outlaws all transportation for involuntary servitude not merely by vessel, as the law now reads. Other language therein is merely clarifying.

I would like to add that a further language change should be made in this and other sections if they are to be entirely clear. Thus, the bill would make liable anyone who "causes to be subjected" another to the prohibited conduct of section 242. The present 242 omitted these quoted four words, the revisers feeling that the language was unnecessary because the definition of a "principal" in section 2 of the

Criminal Code rendered criminally liable a person who caused another to commit this crime. The words "causes to be subjected" were also omitted by the revisers from the present section 1583. But if this act adds the words to section 242 and does not add them to section 1583, it might afterward be argued that 1583 does not apply to a person who causes the crime to be committed, in spite of the definition in section 202 of the Criminal Code.

Part 2 of title II strengthens the Federal protection of the right to political participation. Section 211 thereof clarifies section 594 of the Criminal Code by expressly making criminal interference with voting not only at general elections but at special and primary elections as well.

Mr. DENTON. On account of race or religion?

Mr. LEVY. Yes. That is the very next sentence that I have.

Mr. DENTON. Pardon me.

Mr. LEVY. Section 212 of the bill makes the right to qualify to vote and to vote a right protected by section 242 of the Criminal Code, as discussed above, and adds that equal opportunity to vote shall be given without distinction, direct or indirect, based on religion or national origin, as well as on the already prohibited basis of race or color. Distinction on the basis of previous condition of servitude is omitted, since no such distinctions can exist any more.

Section 213 of the bill gives a right of civil action to one aggrieved by a violation of section 211, and provides that sections 211 and 212 shall also be enforceable by the Attorney General, thus giving two practical remedies for the deprivations of these civil rights. The prohibited conduct will be much less likely to occur if these remedies, easily pursued, are added to the already-existent but seldom-enforced criminal penalties.

Part 3 of title II prohibits discrimination or segregation in interstate transportation. While the Supreme Court has ruled that a State law imposing segregation is unconstitutional as an undue burden on interstate commerce (*Morgan* v. *Virginia*, 328 U. S. 373, 1946), it is not clear whether or not a self-imposed carrier regulation imposing segregation is unconstitutional. In fact, the constitutionality of such a requirement is at this very moment before the United States Supreme Court, which will probably rule upon it this fall. The States themselves probably cannot outlaw these regulations, since that, too, would be an undue burden on the interstate commerce (*Hall* v. *DeCuir*, 95 U. S. 485 (1877)). No cry can possibly be raised of States' rights, for, as was said in the Hall case:

> If the public good requires such legislation, it must come from Congress and not from the States (Id., at 490).

There can be no doubt that the public good requires the end of segregation. This degrading process must be stopped, not only to stop the inroads of Communist propaganda but also to restore dignity to all men, be they white or black.

Mr. BYRNE. Are there any questions?

Mr. DENTON. Let me ask you this question: Are you interested in the antilynching law at this time or not?

Mr. LEVY. Yes; we most certainly are.

Mr. DENTON. Let me ask you about one phase we have been talking about here.

Mr. LEVY. Surely.

Mr. DENTON. Some of the bills give a cause of action against the community in which the lynching took place. Some do not. What is your reaction toward that?

Mr. LEVY. Frankly, my own personal reaction is one of puzzlement. I am not sure which I would prefer. My organization has not taken any official position on which is preferable.

My own view is that, in line with our traditional policies, we would probably very much be opposed to making the entire community liable. That is nothing more or less than guilt by association, which is a rather popular concept these days. If a man is merely a member of an organization on the Attorney General's list or if he has been a member of any one organization during the past 10 years, by the mere fact of his membership he is denied a right to a job in private employment which might give him access to classified material. We oppose that. It strikes me that if you make an entire community liable for the sins of some of its officers you are imposing guilt, or at any rate fining them by the taxing power, fining the individuals who had absolutely nothing to do with the conduct being condemned.

Mr. DENTON. I have another question on that same thing. This is presented by one southern Congressman and by one from the North. They propose in this antilynching measure that the States adopt a law giving either the governor or the attorney general the right to take action and bring an action in a county other than that in which the lynching occurred, and then the Government will not step in unless they fail to take action within a reasonable time, but the Government will step in if they do not have that law, and if they do have such law and do not take action in a reasonable time.

Here is their theory: That all criminal law requires the consent of the people who enforce the law and the consent of the Government, and if the Southern States would do this themselves it would not be as obnoxious to them and would accomplish the result better than having the Government do it. What is your reaction on that?

Mr. LEVY. My reaction to that is this: First, I am very much troubled by the time element. I have spoken to one of our attorneys who used to be the head of the civil-rights section. I was speaking to him only this morning, and he informed me that one of the greatest factors in being able to initiate these prosecutions successfully is the time element; that if the United States attorneys are not promptly alerted, that if the investigation is not made very promptly, all chance of catching the culprits is just about completely gone. So, if you say that in each particular investigation you have to wait for the State investigation to run its course, you may find that the Federal Government will never be able to act effectively.

Mr. DENTON. I did not make myself clear. It was not the investigation I was referring to, but it was the taking of the court action, which the bill provides.

Mr. LEVY. Who would make the investigation? There would have to be an investigation before court action, I assume.

Mr. DENTON. Certainly. Under their theory, I do not believe that would prohibit the Government from making an investigation.

Mr. LEVY. Well, of course, there is no objection to having that State law, but on the other hand, there is equally no objection to having a Federal law, and it certainly will strengthen the civil rights.

For instance, if you have a political meeting which is broken up, a meeting where they are discussing national issues, and force and violence is used, the people who have been attacked have a right to sue for assault and battery under State law. However, they also have a Federal right, and the action for assault and battery does not do anything to vindicate that Federal right. If you have a Federal right—and I think there is no doubt but that you do have a Federal right in this particular case of lynching—I see no reason why that Federal right must be vindicated through State law.

This country has a National Government as well as State governments, and a Federal right granted by the United States Constitution, by the entire people of this country, must, I think, be enforced by the Federal Government as well as by the State government.

Mr. DENTON. I take it you would not be in favor of that provision?

Mr. LEVY. No. I am very much afraid, moreover, that the practical result of that would be that the laws would be on the statute books of the States for several years and nothing would be done under them. Indeed, little has been done in almost all of the Southern States, and we would find that civil rights would be very flagrantly violated, even though there were apparently statutes dealing with them. We have had enough difficulty in enforcing the present Federal law. I think it is naive to believe that if the Federal Government is having difficulty in enforcing the law that the Southern States will have an easier time and would be more willing to do so. Of course, they never would be. You have an unwilling enforcement agency. Highly unrealistic, I would say.

Mr. BYRNE. Thank you very much.

Mr. FRAZIER. Mr. Levy, just one question.

Mr. LEVY. Surely.

Mr. FRAZIER. You spoke of the Attorney General's list. The American Civil Liberties Union is not on the list; is it?

Mr. LEVY. Most certainly not.

Mr. FRAZIER. I did not think so, but you referred to that.

Mr. LEVY. We certainly are not on that list. Even the Dies committee said we were perfectly American.

Mr. FRAZIER. I did not think you were on the list.

(The following was submitted for the record:)

STATEMENT SUBMITTED BY HERBERT M. LEVY ON CIVIL RIGHTS ACT OF 1949

JUNE 22, 1949.

My name is Herbert M. Levy. I am staff counsel of the American Civil Liberties Union, and I am appearing here on its behalf, in support of H. R. 4682, the omnibus proposed Civil Rights Act of 1949.

The passage of this bill would be the strongest possible blow that Congress could strike against communism, for the most effective propaganda of the Communists is that while this country prates about freedom and civil liberties, it does nothing about them. Communists at home and abroad, who are cynically in favor of civil liberties for themselves and no one else, would be rudely shaken by a congressional act to strengthen the civil liberties of all. It is time for America to prove that she believes in freedom and that she will do something about it.

After the listing of certain sound findings, the bill, in its effort to strengthen the civil rights of the people as guaranteed by the Constitution and the United Nations Charter, provides, in title I, the machinery for such strengthening. Part 1 of title I would create a permanent Commission on Civil Rights in the executive branch of the Government, whose function it would be to gather information on civil liberties, appraise governmental and private action in connection therewith and annually report its findings and recommendations. The importance of such a Commission cannot be overemphasized. The American Civil Liberties Union feels that last year's Presidentially appointed ad hoc Committee on Civil Rights, both through its study of civil liberties problems and the tremendous educational value of its findings and recommendations, contributed invaluably toward the strengthening of our constitutional guaranties of freedom. There can be little doubt of the urgent desirability of having such a Commission on a permanent basis.

Part 2 of title I provides for the reorganization and strengthening of the civil-rights activities of the Department of Justice. The need for such a reorganization is patent to anyone with knowledge of the Department's past activities. Handicapped by insufficient funds and a scarcity of personnel, the Department has rarely ever been able to initiate civil-rights prosecutions. The strengthening of that Department is long overdue.

Part 3 of title I wisely supplements the Commission's activities by providing for a congressional Joint Committee on Civil Rights to study the field with a view toward legislating to improve respect for an enforcement of civil rights. The committee is given subpena powers. The establishment of such a committee to investigate ways to further our freedoms of speech, religion, and press is a necessary counterbalance to the House Un-American Activities Committee, whose inevitable tendency has been to restrict those very same freedoms.

The substantive provisions of the bill are to be found in title II. Part 1 thereof consists of amendments and supplements to existing civil-rights statutes found in the Criminal Code (title 18). Section 241 (a) of that code now provides that "if two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same," such conduct is criminal.

Section 201 of the proposed act would change the word "citizen" to "inhabitant of any State, Territory, or district," and thus desirably extend the classes of persons protected and make the language of this section coincide with that of section 242.[1]

The last part of the present section 241 (a) is left unchanged.[2] It renders criminal the going of two or more persons in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured.

The bill then would add two valuable new subsections to section 241. Subsection (b) would make an individual guilty of criminal conduct if he performed alone the acts already criminal under subsection (a) if he had performed them in concert with another. This remedies an obvious defect in the existing law, since acts when criminal when performed by two should not be considered innocent because performed by one.

Subsection (c) is most valuable, as it gives the person whose civil rights have been violated a private right to a civil action for damage or other relief. There is a need for this law. Only recently it was held in *Hardyman* v. *Collins* (80 F. Supp. 501), that those who were threatened with beatings by many because of their attempt to run an orderly political meeting, had no right to sue their assailants for a violation of the civil-rights law. Much obscurity surrounds the present aspect of their rule, as a reading of the opinion makes obvious. Subsection (c) would dispel the clouds. It should also be added that the congressional power to enact the rule of subsection (c) was reaffirmed in that very case.

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[1] While the desirability of such an extension is obvious, it would be unfortunate if this attempt to widen the applicability of the bill resulted in some cases in its narrowing. Thus, it is conceivable that one who is a citizen but not an inhabitant of any State, Territory, or district might be deprived of his rights, and the bill would unfortunately remove his protection. This can be remedied by changing lines 17 and 18 of p. 10 to "any citizen or inhabitant of any State, Territory, or district."

[2] The substitution in the bill of the word "of" for the word "or" of the present law is obviously a misprint. This error occurs at line 24, p. 10, of H. R. 4682.

Section 202 of the bill would amend the present section 242 of the Criminal Code to increase the punishment of one who deprives another under color of law of his rights, privileges, or immunities, or subjects an inhabitant [3] to different punishments because of his race, color, or being an alien, when such conduct results in death or maiming

Section 203 of the bill would add a new section 242A, defining six of the rights, privileges, and immunities referred to in section 242, thus adding much clarity to the bill

Section 204 of the bill would add to title 18, United States Code, section 1583, dealing with involuntary servitude, a provision that whoever "holds" a person in involuntary servitude is guilty of a crime, and outlaws all transportation for involuntary servitude not merely by vessel, as the law now reads. Other language therein is merely clarifying.[4]

Part 2 of title II strengthens the Federal protection of the right to political participation. Section 211 thereof clarifies section 594 of the Criminal Code by expressly making criminal interference with voting, not only at general elections, but at special and primary elections as well Section 212 of the bill makes the right to qualify to vote and to vote a right protected by section 242 of the Criminal Code, as discussed above, and adds that equal opportunity to vote shall be given without distinction, direct or indirect, based on religion or national origin, as well as on the already prohibited basis of race or color. Distinction on the basis of previous condition of servitude is omitted, since no such distinctions can exist any more.

Section 213 of the bill gives a right of civil action to one aggrieved by a violation of section 211, and provides that sections 211 and 212 shall also be enforceable by the Attorney General, thus giving two practical remedies for the deprivations of these civil rights The prohibited conduct will be much less likely to occur if these remedies, easily pursued, are added to the already-existent but seldom-enforced criminal penalties.

Part 3 of title II prohibits discrimination or segregation in interstate transportation. While the Supreme Court has ruled that a State law imposing segregation is unconstitutional as an undue burden on interstate commerce, *Morgan* v. *Virginia* (328 U. S. 373 (1946)), it is not clear whether or not a self-imposed carrier regulation imposing segregation is unconstitutional. The States themselves probably cannot outlaw these regulations, since that too would be an undue burden on interstate commerce, *Hall* v. *DeCuir* (95 U. S. 485 (1877)). No cry can possibly be raised of States' rights, for, as was said in the Hall case, "If the public good requires such legislation, it must come from Congress and not from the States" (id. at 490).

There can be no doubt that the public good requires the end of segregation. This degrading process must be stopped, not only to stop the inroads of Communist propaganda, but also to restore dignity to all men, be they white or black.

Mr. BYRNE. The next witness is Mr. Markle. You may proceed, Mr. Markle.

STATEMENT OF SAMUEL MARKLE, NATIONAL CIVIL RIGHTS COMMITTEE, ANTIDEFAMATION LEAGUE OF B'NAI B'RITH

Mr. MARKLE. Mr. Chairman and gentlemen, I am presenting the following statement in behalf of the Antidefamation League of B'nai B'rith. B'nai B'rith, founded in 1843, is the oldest civic organization of American Jews. It has a membership of over 300,000 men and women. The Antidefamation League was organized in 1913 under the sponsorship of the parent organization in order to cope with racial

[3] See footnote 2, supra. The substitution of the word "and" for the word "or" on line 13, p. 12, would seem to be a printing error.

[4] A further language change should be made in this and other sections if they are to be entirely clear. Thus, the bill would make liable anyone who "causes to be subjected" another to the prohibited conduct of section 242 The present 242 omitted these quoted four words, the revisers feeling that the language was unnecessary because the definition of a "principal" in section 2 of the Criminal Code rendered criminally liable a person who caused another to commit this crime The words "causes to be subjected" were also omitted by the revisers from the present section 1583. But if this act adds the words to section 242 and does not add them to section 1583, it might afterward be argued that 1583 does not apply to a person who causes the crime to be committed

and religious prejudice in the United States. The program of the league is designed to achieve the following objectives: To eliminate and counteract dafamation and discrimination among the various racial, religious, and ethnic groups which comprise our American people; to counteract un-American and antidemocratic activities; to advance good will and mutual understanding among American groups; and to encourage and translate into greater effectiveness the ideals of American democracy. In other words, the ADL is an organization dedicated to putting into complete practice the basic principles of our American democracy. It is our feeling that our American system "can tolerate no restrictions upon the individual which depend upon irrelevant factors such as his race, his color, his religion, or the social position to which he is born." (Report of the President's Committee on Civil Rights, p. 4.) We believe that the well-being and security of all racial and religious groups in America depend upon the preservation of our basic constitutional guaranties. We have long recognized that any infringement of the civil rights of any group is a threat to the security of all our American people.

Because of the ADL's dedication to a program of strengthening the observance of our civil rights, we hailed the issuance of Executive Order 9808 on December 5, 1946. The Executive order established a Presidential Committee to be known as the President's Committee on Civil Rights. The same order authorized the Committee "to inquire into and to determine whether and in what respect current law-enforcement measures and the authority and means possessed by Federal, State, and local governments may be strengthened and improved to safeguard the civil rights of the people." The ADL was one of the organizations invited by the President's Committee on Civil Rights to appear and present to the Committee its suggestions as to how the civil rights embodied in our fundamental documents could best be implemented and protected. We appeared and gave testimony which included suggestions that there be established a permanent Commission on Civil Rights in the executive branch of the Government; that the Civil Rights Section of the Department of Justice be reorganized as a fully staffed Division of that Department, headed by an Assistant Attorney General, and with field offices and an assurance of adequate investigative assistance; that existing Federal legislation protecting civil rights be strengthened through amendment and supplementation; and that, wherever possible, legislation be enacted to bar discrimination based on race or religion, in interstate commerce and in all other major areas of the community economic and social life. We also pointed out that the right of every citizen to take part in the operations of the body politic on a basis of equality without discrimination based on race and religion was fundamental to our American way of life; and that, insofar as this fundamental right was being violated, our American democracy was being endangered. Every one of the foregoing recommendations was incorporated in the Report of the President's Committee on Civil Rights.

It is not surprising, therefore, that our organization supports H. R. 4682, introduced by the chairman of the House Committee on the Judiciary. This bill would put into effect the recommendations listed above. In these times, when democracy is engaged in a world-wide

ideological struggle with the concept of totalitarianism, the enactment of a bill such as H. R. 4682 would greatly strengthen the democratic forces. Our Nation was, as this bill says, founded upon the recognition of the need to safeguard the integrity and dignity of the individual. It is this which distinguishes us and our way of life from totalitarianism. Hence, in these times, we must be ever vigilant against those forces here in our own country which seek to undermine that basic concept by denying the complete and full enjoyment by all persons of the rights, privileges, and immunities secured and protected by our Constitution and laws, and which would destroy our existing form of Government through usurping the duties of our law-enforcement officers.

Before discussing the specific provisions of the bill itself, I would like, on behalf of the Antidefamation League, to commend the authors of this bill on the findings of fact and declaration of Federal policy which they embodied in its first portion. The preamble of this bill is worthy to stand alongside of our Declaration of Independence and the preamble to our Constitution. Its endorsement of the principles of the Universal Declaration of Human Rights and its affirmation of the basic role in our democracy of the integrity and dignity of the individual are thunderous declarations of our devotion to the betterment of humanity. The formulation in this statute of a Federal policy to protect the right of every individual to be free from discrimination based on race, religion, color, or national origin is a step toward guaranteeing to all our people the freedom from want and fear for which we fought the last war. It is well that this bill is promulgated under such auspicious doctrines.

Part 1 of title I of H. R. 4682 establishes a Commission on Civil Rights in the executive branch of the Government. It provides that this Commission shall consist of five members appointed by the President, with the advice and consent of the Senate. These members are to serve on a per diem basis, receiving $50 a day in payment for each day spent for work on the Commission. It is the duty and function of the Commission to gather information concerning social and legal developments affecting the civil rights of individuals under the Constitution and laws of the United States. The bill also directs the Commission to appraise the policies, practices, and enforcement program of the Federal Government with respect to civil rights, and to appraise the activities of Federal, State, and local governments and of private individuals and groups in order to determine what activities adversely affect civil rights. The Commission is also required to make an annual report to the President, containing its findings and recommendations, and is empowered to make additional reports to the President either when it deems such reports appropriate or when such reports are requested by the President. The Commission is also authorized to set up advisory committees and to consult with State and local governments and private organizations. It is directed to utilize the services of other Government agencies and private research agencies to the fullest extent possible, and all Federal agencies are directed to cooperate fully with the Commission. A full-time staff director and other necessary personnel are made available by the act to the Commission.

The need for a permanent Commission on Civil Rights in the executive branch of the Government arises out of the need of every democracy to carry on a constant reexamination of the status of its citizens' civil rights. Those rights are the keystone in the arch protecting the basic freedoms of every inhabitant of our country. We must be ever alert to combat any trend, no matter how gradual, which would curtail those rights. Our history has demonstrated that an occasional, temporary check will not suffice. There is need for a permanent running audit. This only a permanent commission can provide. It has been rightly said, "The condition upon which God hath given liberty to man is eternal vigilance."

One final point in this connection. Part 1 of title I is excellent, as far as it goes. It would seem, however, that to insure the effectiveness of the Commission it would be desirable to add to part 1 of title I language empowering the Commission to hold public hearings, to subpena witnesses and necessary documents, and to administer oaths to the witnesses it calls in such hearings.

Part 2 of title I of the bill proposes to meet the widespread demand that there be established in the Department of Justice a Civil Rights Division headed by an Assistant Attorney General. It has all along been the feeling of the ADL that enforcement of Federal civil rights statutes suffered because such enforcement was entrusted merely to a small unit within the Criminal Division of the Department of Justice. The head of this unit could not report directly to the Attorney General, but had to deal with the Attorney General through the Assistant Attorney General in charge of the Criminal Division. Furthermore, this unit, which was of comparatively recent origin, was severely understaffed, and was handicapped by being able to operate in prosecutions throughout the country only through local United States attorneys.

Mr. FRAZIER. May I interrupt you there?

Mr. MARKLE. Yes, sir.

Mr. FRAZIER. Suppose you created a new division of the Department of Justice; you would not expect them to go out into the various districts of the United States and prosecute those cases, would you?

Mr. MARKLE. No; not necessarily.

Mr. FRAZIER. I do not say that they could not do it but, as a matter of fact, the other divisions of the Department of Justice do not do it except in very rare cases when the district attorney asks them to send somebody in to help them.

Mr. MARKLE. Of course, they would be specially trained men to work in those prosecutions as well as in the investigation of civil-rights cases, if it were a top division.

Mr. FRAZIER. Your investigations would be made by the FBI, would they not?

Mr. MARKLE. That is correct.

Mr. FRAZIER. As all of them are made now.

Mr. MARKLE. That is correct; but we suggest that there be a specially trained group, men who would be specially trained on the wrongs that are committed under our failure to grant civil rights.

Mr. FRAZIER. You would not want to set up a separate FBI for the purpose of these investigations, would you?

Mr. MARKLE. Not a separate FBI, but there could be a separate group who would work with the top staff here in the Attorney General's department. That would be our suggestion.

Mr. FRAZIER. Very well.

Mr. MARKLE. In many instances—especially in those areas where aggressive Federal enforcement of civil-rights statutes was most needed—this unit found itself further handicapped by facing the possibility of having to carry on prosecutions through a local United States attorney who could not give it his wholehearted cooperation because of local factors and pressures. Raising the civil rights enforcing unit of the Department of Justice to division level would go a long way toward overcoming these difficulties. It would also result in a reflection within the Department of Justice structure of the true importance of the enforcement of legislation protecting civil rights. That, of course, is a partial answer to your question.

Another difficulty experienced by the Department of Justice attorneys responsible for the enforcement of the Federal civil-rights laws arose in connection with the investigations which laid the groundwork for such enforcement. It was found that, in many such cases, special training of the investigative force was needed to insure the type of investigation which would lead to the complete development of all possible aspects of the evidence necessary to achieve a successful prosecution. It was found, also, that the type of special training necessary had not been given to the FBI special agents assigned to such investigations. Hence, the ADL endorses section 112 of part II of title I, which provides that the personnel of the FBI shall be increased to the extent necessary to carry out effectively the duties of the Bureau with respect to the investigation of civil-rights cases, and that the Bureau shall include in the training of its agents special training aimed at insuring the best possible handling of investigations of civil rights cases.

Part 3 of title I embodies another recommendation of the President's Committee on Civil Rights. It establishes a Joint Committee on Civil Rights to be composed of seven Members of the Senate and seven Members of the House of Representatives. This joint committee is directed to—

> make a continuing study of needs relating to civil rights; * * * to study means of improving responsibility for and enforcement of civil rights; and to advise with the several committees of Congress dealing with legislation relating to civil rights.

This newly established joint committee is authorized to hold hearings, to require the attendance of witnesses and the production of documents by subpena, to administer oaths, and to take testimony.

Some question might arise as to the possibility of overlapping of function between the Commission on Civil Rights in the Executive Department and the Joint Congressional Committee on Civil Rights. Such overlapping could, of course, be avoided by the establishment of a continuous liaison between the congressional committee and the Commission. Furthermore, it would seem that the joint committee would concentrate its interest on problems which might lead to improving civil rights legislation, while the Commission on Civil Rights would look into instances where existing laws are not adequately enforced or are even blatantly flaunted. The congressional committee would look into the possibility of extending the frontiers of existing constitutional safeguards and legislation, whereas the Commission would concentrate on examination and cooperate with the agencies enforcing Federal and State legislation protecting civil rights. In

any case, in an area so important to our country as civil rights, where in the past there has been widespread negation of such rights, competition among several arms of the Government to ferret out abuses and to rectify wrongs would seem to us to be highly desirable.

Title II of H. R. 4682 contains a series of provisions intended to strengthen the protection of every individual's right to liberty, security, citizenship, and its privileges. Soon after the Civil War, in 1870, the Congress enacted a series of statutes intended for use against those elements who were seeking to hold the recently freed slaves in continued bondage. One of these statutes is embodied in what is now section 241 of title 18 of the United States Code. The section as it now stands provides that, if two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—they shall be fined not more than $5,000 or imprisoned not more than 10 years or both. This statute was enacted as a result of the activity of the KKK.

Mr. FRAZIER. Do you not think those two statutes are strong enough to cover a multitude of sins?

Mr. MARKLE. They have not been so interpreted by the Supreme Court. They have been limited in their application.

Mr. FRAZIER. There have been a very great number of prosecutions under those two sections to which you just referred.

Mr. MARKLE. A great many prosecutions?

Mr. FRAZIER. Yes.

Mr. MARKLE. Well, there is an awful lot of evasion of civil rights.

Mr. FRAZIER. It is not a question of how much there is, but I asked you if you did not think the section was broad enough to cover those cases.

Mr. MARKLE. It is our feeling that the present section 241 would be broadened by the proposed amendment of this proposed act. We certainly feel that it is desirable particularly in view of the extreme limitation of the United States Supreme Court in the Cruikshank case and in other cases.

A careful examination of the statute shows a number of substantial limitations. Because it is a conspiracy statute it cannot be violated by one person acting alone. It limits its protection to citizens of the United States and is not applicable to protect the rights of aliens. The purpose of the conspiracy outlawed must be the invasion of rights or privileges "secured by the Constitution or laws of the United States." Through the years, the Federal courts have interpreted this statute so as to confine the term "rights and privileges secured by the Constitution or laws of the United States" to a narrow area. The courts have refused to hold that national citizenship involves all the fundamental rights of citizenship guaranteed by both the State and Federal Governments. Thus, in the Cruikshank case (92 U. S. 542, decided in 1875, the Supreme Court held that the statute was not applicable to a group of private individuals who had prevented Negroes from attending meetings. In holding the indictment insufficient, the Court stated that the section would have applied only if the meeting of the Negroes had been an assembly for the purpose of petitioning Congress for a

redress of grievances, or for anything else connected with the powers or duties of the National Government. Since then, the Supreme Court has consistently shown reluctance to expand the applicability of section 241.

Part 1 of title II of H. R. 4682 does what can be constitutionally done to improve and strengthen section 241. It extends the bans contained in section 241 to single persons acting alone. It increases the punishment which may be assessed against violators in cases where the illegal action under the section results in the death or maiming of the victim. It authorizes a civil suit for damages by persons injured as a result of the violation of section 241 directed against the person or persons who were responsible for the violation of the section. Another change made is the extension of the coverage of the act so that it protects the rights, not just of citizens of the United States, but of "any inhabitant of any State, Territory, or district" of the United States. Finally, in an effort to resolve the ambiguity which now exists as to precisely which rights are rights protected by the Constitution and laws of the United States, part 1 of title II adds a new section which lists a series of six specific rights which are covered by section 241. Among the rights listed are the right to be immune from fines or deprivation of property without due process of law; the right to be immune from punishment for crimes except after a fair trial and upon conviction and sentence pursuant to due process of law; the right to be immune from physical violence applied to extract testimony or a confession; the right to be free of illegal restraint of person; the right to protection of person or property without discrimination because of race, color, religion, or national origin; and the right to vote as protected by Federal law. It is noteworthy that, in listing these specific rights, the section specifies that the listing is not exclusive and may include other rights not specifically stated.

Another law passed at about the same time as section 241 of title 18 is contained in section 242 of the same title. This latter section, which was originally part of the Civil Rights Act of 1866, was adopted primarily in order to provide more adequate protection of the Negro race and their civil rights. It is directed only against officers or persons acting under color of authority. This statute also has been so interpreted by the Supreme Court as to narrow its effect and coverage. For example, in the case of *Screws* v. *United States*, decided in 1945 (325 U. S. 91), the Supreme Court, in reversing the conviction under section 242 of a southern sheriff who beat a Negro prisoner until he died, held that the Federal Government, to support a conviction under the statute, must prove a specific intent on the part of the defendant to deprive the victim of "rights, privileges, or immunities secured or protected" by the fourteenth amendment. Part 1 of title II of H. R. 4682 proposes to amend section 242 to increase the maximum penalty from 1 year in prison to 20 years in prison, and from $1,000 fine to $10,000 fine, if the victim of the deprivation of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States either dies or is maimed as a result of that deprivation. In addition, the section spelling out the six specific rights, privileges, and immunities which are included within the coverage of section 241 is also made applicable to the rights mentioned in section 242.

The virtue of listing the six specific rights which are stated to be the minimum covered by section 242 is twofold. First, the spelling out of some of the specific acts forbidden by the statute will make it easier to prove the necessary specific intent on the part of the defendant in accordance with the Screws decision. Secondly, the specific description of the rights covered by section 242 will also put local law-enforcement officials on notice that, under Federal law, they may not deny to any persons under their jurisdiction the right to a fair trial, the right to be immune from physical violence or illegal imprisonment, the right to vote in Federal elections, and so forth.

The third provision of part 1 of title II extends the coverage of section 1583 of title 18, one of the antipeonage statutes now contained in our Federal criminal law. Section 1583 is directed against any effort to entice a person into slavery. It provides that whoever kidnaps or carries away any other person with the intent that such other person be sold into involuntary servitude or held as a slave, or whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he shall be maimed or held as a slave or sent out of the country to be so made or held, shall be fined not more than $5,000 or imprisoned not more than 5 years or both. The proposed amendment would expand the coverage of the latter provision of the section to make it applicable not only to a vessel but to any other means of transportation, and to make it clear that the crime is committed even when the person enticed is transported to locations beyond the United States.

Part II of title II of H. R. 4682 is legislation which, in our opinion, will do at least as much to protect the right of American citizens to vote in elections for public office as any anti-poll-tax legislation.

Section 594 of title 18 now makes intimidation of voters in Federal elections a crime punishable by a fine of $1,000 and imprisonment for 1 year, or both. The specific language of section 594 makes it applicable to "any election held solely or in part for the purpose of electing such candidate." Part II of title II of the bill under consideration would amend section 594 to specify that it is applicable to any "general, special, or primary election" held for the purpose in whole or in part, of selecting or electing any candidate for Federal office. Thus, this amendment to section 594 would make it clear that the section is applicable, not ony to the actual election but to the primary elections. This is in recognition of the fact that, in many parts of our country victory in the primary is tantamount to election to office, and that, hence, control of the primaries is control of the election itself. Such a clarification of section 594 has long been necessary.

Mr. DENTON. May I ask you one question there? Do you think increasing the penalty necessarily makes it easier to enforce the law? Do you think the severity of the penalty helps very much? Is it not the certainty and the speed of the punishment that makes for effective enforcement?

Mr. MARKLE. Increasing of the penalty, psychologically, certainly theoretically, would decrease the possibility of the commission of the crime.

Mr. DENTON. In my State we had the prohibition law; we had the famous bone-dry law in Indiana and the punishment was made very severe. As a prosecutor I found it very much more difficult to get convictions under that latter law than its was before.

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Mr. MARKLE. Of course, there you were dealing with a law that was morally not popular and I suppose it would be more difficult. But I think although psychologically increasing the penalty would increase the fear of violation, I do not think it would have as much of an effect as the certainty of prosecution and conviction. I think your point is well taken and I would say taht I substantially agree with you. However, it makes a crime seem much more serious when there is a larger penalty attached to it. It just has that psychological effect. And there is no law that says you must always find the maximum penalty when a man is convicted of a crime.

Under section 31 of title 18 of the United States Code, all citizens in the United States who are otherwise qualified by law to vote in any election either for Federal, State, or local office, are entitled to vote at all elections, without distinction because of race, color, or previous condition of servitude, notwithstanding the existence of any constitution, law, custom, usage, or regulation of any State or Territory to the contrary. Part II of title II of the proposed bill under consideration would amend this section for two purposes. First, it would extend the protection of the section to all those eligible by law to vote and would make the protection applicable to their right to qualify to vote. Secondly, it would specify that the right to qualify to vote, as well as the right to vote in every election, whether it be a general, special, or primary election, is a right protected by the Federal Constitution and laws under section 242 of title 18. What this amendment does is to recognize that one of the techniques used to deny the franchise to persons otherwise eligible, is to prevent them from qualifying to vote by preventing them from registering or establishing their residential qualifications or—where the poll tax is still a prerequisite to the right to vote—preventing them from paying their poll tax.

The last provision of part II of title II establishes two new sections to be used in case of interference with a person's right to qualify to vote or to vote. This final section permits a civil suit to be brought against any person or persons violating the provisions of section 594 as amended, either for damages or for a court order enjoining the denial of the right to vote or to qualify to vote. The same section also permits the Attorney General of the United States to bring an action for an injunction against any officials denying any citizen his right to vote or to qualify to vote in accordance with the provisions of the foregoing sections. It is provided that both the Federal district courts and State and Territorial courts shall have concurrent jurisdiction over all civil proceedings either for damages or for preventive, declaratory, or other relief against violations of the first two sections of part II or title II.

The provisions of part II of title II of H. R. 4682 are based upon a recognition that, contrary to popular understanding, the voteless citizens, both colored and white, of the South, are not disfranchised on election day, but prior thereto. Vast numbers of persons who are qualified to vote under the election laws of the Southern States never show up at the polls because they have not been allowed to pass through the various preliminary steps leading to qualification as a voter in the primaries and general elections. They are not permitted to vote on election day because they are not registered to vote.

Mr. FRAZIER. Now, just what do you mean by that—not being able to qualify?

Mr. MARKLE. May I be permitted to read the rest of this page? I think that answers your question. Then I shall come back, if there is any question about it.

Mr. FRAZIER. Go ahead; I just wanted a clarification of what you meant.

Mr. MARKLE. I think I cover that in the next two paragraphs.

Although there has been a considerable gain in recent years in the number of colored citizens in the Southern States who qualify to vote, it is still a fact that only a very small percentage of southern Negroes of voting age do so. A recent study, "Race and Suffrage in the South Since 1940," by Prof. Luther P. Jackson of Virginia State College, indicates that only 600,000 of the over 5,000,000 southern colored citizens of legal age qualified to vote in 1947. Most of the 600,000 are residents of the large southern cities. In many areas of the rural South, where 65 percent of the Negroes reside, it is well-nigh impossible for one of them to get past the first steps in the voting process.

Although the poll tax still represents a formidable obstacle to qualification in the seven Southern States which still maintain this archaic prerequisite for the exercise of the franchise, a far greater barrier to voting is the registration requirements used by local boards to disfranchise arbitrarily thousands of persons satisfying all the formal requirements of the election laws. In his study, Professor Jackson lists some of the discriminatory tactics which are practiced upon Negro applicants for registration:

1. Requiring one or more white character witnesses.
2. Severe application of property qualifications and requiring only Negro applicants to show property-tax receipts.
3. Strict enforcement of literacy tests against Negro applicants
4. Putting unreasonable questions on the Constitution to Negro applicants.
5. Basing rejection of Negro registrants on alleged technical mistakes in filling out registration blanks.
6. Requiring Negro applicants to suffer long periods of waiting before the officials attend them.
7. Requiring Negro applicants to fill out their own blanks while those of whites are filled out for them by the officials.
8. Evasion—informing Negro applicants that registration cards have run out, that all members of the registration board are not present, that it is closing time, or that the applicant will be notified in due course.
9. Deliberate insults or threats by officials and/or hangers-on.

The correctness of Professor Jackson's observations has been verified by independent and impartial observers.

Under existing law practices such as those listed above can be attacked only by indictment and trial of election officials by the Federal Government long after the crime is committed or by civil suit brought by the parties injured. The first method is ineffective because southern white juries do not convict in such cases. The second is ineffective for the same reason and because it is so expensive to the plaintiff.

What part II of title II would do, in addition to strengthening existing remedies, would be to create a new remedy. The law would authorize the Attorney General to seek an injunction against every election official who put illegal barriers in the way of citizens qualifying under the Constitution and general laws to vote. Relief would be immediate. Persons violating such injunction orders would be subject to jailing for contempt of court. Such punishment could be

assessed without any resort to prejudiced juries. The resources of the Federal Government with respect to finances and personnel are such that an enforcement program could be undertaken of sufficient scope to be effective in the only way that counts, so as to give large numbers of previously disfranchised people access to the ballot boxes.

The third and last part of title II of H. R. 4682 contains two sections directed against discrimination or segregation in interstate transportation. The first section declares that all persons traveling within the jurisdiction of the United States shall be entitled to full and equal enjoyment of the accommodations of any public conveyance operated by a common carrier engaged in interstate or foreign commerce, subject only to conditions and regulations applicable to all, without discrimination or segregation because of race, color, religion, or national origin. The second paragraph of the section provides that any person who attempts to deny to any other person the full and equal enjoyment of any such accommodation because of race, color, religion, or national origin shall be guilty of a misdemeanor and upon conviction be subject to a fine of up to $1,000 as to suit by the injured person for damages or for preventive or declaratory relief. The same paragraph provides that suits under this section may be brought in any district court of the United States without regard to the sum or value of the matter in controversy. The second section of part III makes it unlawful for any common carrier engaged in interstate or foreign commerce, or any employee thereof, to segregate or otherwise discriminate against passengers using any public conveyance or facility of such carrier because of the race, color, religion, or national origin of such passengers. The same section also provides that any such carrier or officer, agent, or employee of such a carrier who segregates or attempts to segregate such passengers because of their race, color, religion, or national origin shall be guilty of a misdemeanor punishable by a fine of up to $1,000 and shall also be subject to civil suit for damages or for injunctive relief.

The provisions of part III of title II of H. R. 4682 are long overdue. It has long been a blot on the record of our democracy that our Federal Government permits the maintenance of Jim Crow practices in interstate commerce. Insofar as we continue such segregation we are going contra to all the basic tenets of our American system of democracy. When the Federal Government abdicated its control over interstate commerce and permitted the States to institute requirements of racial segregation in common carriers passing through their territory and engaged in interstate commerce, the Federal Government took upon itself the blame for this denial of human rights—for this establishment of classes of citizenship. In view of the Federal Government's international commitments as embodied in the Declaration of Human Rights and the Act of Chapultepec, it is necessary that the Government reassert its full control of interstate commerce, and use that control to bar racial segregation in the area of interstate and foreign commerce, and to lead those States which still require segregation forward on the road to democracy. So long as the Federal Government permits racial segregation in areas under its jurisdiction, it will find its campaign to extend democracy to backward areas throughout the world severely impeded. Ours is an international obligation. Let us not shirk it.

The report of the President's Committee on Civil Rights was an epoch-making document. Its recommendations are a blueprint for completing the noble democratic structure which our founding fathers envisaged. It is well that we should initiate as quickly as possible the passage of legislation intended to lift the recommendations of that report from the realm of theoretical discussion into the area of actual practice. Passage of H. R. 4682 will be one step forward toward that goal.

Mr. BYRNE. Are there any questions, gentlemen? If not, thank you very much, Mr. Markle.

Mr. Wilkins?

STATEMENT OF LESLIE PERRY, REPRESENTING THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, NEW YORK, N. Y.

Mr. PERRY. Mr. Chairman, my name is Leslie Perry. Mr. Wilkins was unable at the last moment to get here and has asked me to read his statement.

Mr. BYRNE. Very well. You may proceed.

Mr. PERRY. Mr. Chairman and members of the committee, the National Association for the Advancement of Colored People of which I have the honor to be acting executive secretary, wishes to express its appreciation for the opportunity to appear before you and testify in support of this legislation.

This association has a membership of 500,000 white and colored persons organized into 1,600 local units located in 45 States, the District of Columbia, and the Territory of Hawaii. It has been devoting all of its energies since its founding in 1909, to securing the civil rights of the Negro citizens of the United States, and in this effort, as the record will show, it has preserved and protected the civil rights of white Americans, as well.

It is natural, therefore, that our association should be in favor of the type of legislation your committee has under consideration. American citizenship, with its rights and privileges, is cherished beyond price because of the principles of freedom and equality of opportunity for the individual enunciated by the founders of the Nation.

It was obvious from the beginning that the mere enunciation of these principles would not suffice to secure to the individual citizen his rights under the Constitution and the Bill of Rights. As the Nation grew, our courts had to interpret the Constitution. Our legislatures had to enact laws.

There is no necessity, we are sure, to recite in lengthy detail here the reasons why it has become imperative that the Congress enact effective antilynching legislation such as the Douglas-Case bill, H. R. 795 and H. R. 155, and the Celler omnibus civil-rights measure, H. R. 4682. The issue of human rights has become the concern of the nations of the world. An important section of the Charter of the United Nations relates to these rights because it has come to be recognized that deprivation or abridgement of them on any wide scale in any nation creates a condition which could strain the relations of nations and perhaps lead to war.

Human rights also have become the concern of our own country, not only because of our position of leadership among the nations, but because of a desire on the part of increasing millions of our citizens that every American shall be protected in the enjoyment—insofar as law can protect and guarantee—of the fundamental rights of men and citizens in a great democratic commonwealth.

The concrete expression of that concern was contained in the report of the President's Commission on Civil Rights, entitled "To Secure These Rights." Therein, as a result of public hearings, research and exhaustive study, it was recommended that legislation of the kind under consideration by this committee be enacted by the Congress.

The Negro minority, being the largest in the country, and the most easily discerned, has been the principle victim of inadequate legislation and indifferent enforcement of such laws as touched upon its condition.

Negroes have been lynched with impunity and no law has operated to punish lynchers. We cite the March 1949 report of the Southern Regional Council, an organization of white and colored southerners with headquarters in Atlanta, Ga., which declared: "But it should be remembered that a lynching is only an extreme example of a general lack of regard for the individual. The climate which produces lynchings is one of daily insult, intimidation, and the lesser forms of violence, directed against a whole segment of the population." The council asserted in this report that a "pattern of violence" exists in the South. For a number of years the association has called for the enactment of a strong antilynching law. We reiterate that demand.

In what ways, aside from lynching, has this pattern of violence operated against Negro citizens? Well, in great numbers they have been denied access to the ballot box through trickery, intimidation, terror, and violence not short of murder. So recently at the last primary election in the State of Georgia in September 1948 Isaac Nixon of Toombs County, was shot down and killed in his home after the polls closed simply because he exercised that day his right to vote. In Montgomery County in the same State of Georgia, D. V. Carter, father of 10 children, was beaten up and driven from his home and the State because he advised his people to vote and carried some of them to the polls on election day. On numerous occasions prior to elections members of the notorious Ku Klux Klan have paraded through areas inhabited by Negroes with the avowed intention of preventing them from voting. Part 2 of title II of H. R. 4682, dealing with protection of the right to political participation, is therefore, an immediate need.

The Negro has suffered not only deprivation of the right to vote through violence, but deprivation of due process in cases involving life and liberty. Last November 20 Robert Mallard was set upon by a mob in Toombs County, Ga., and shot to death in his automobile in the presence of his wife and child. It was said that Mallard was not the "right kind of Negro" and was "too prosperous." No one has been punished for this crime.

Nineteen days ago at Irwinton, Ga., Caleb Hill was shot to death while in the custody of a law officer and on June 14 two men suspected of his murder were freed by a grand jury on the ground of insufficient evidence. That even so small a part of due process as the

arrest of an offender is considered abnormal in the locality is indicated by the comment of Solicitor C. S. Baldwin, who is quoted by the Associated Press as saying: "Most Georgia sheriffs would have shot the Negro instead of taking him to jail."

It should be noted in passing, in connection with the cases cited above, and with others not here cited, that a new procedure has developed in certain areas in the handling of lynchings and other instances of mob violence. It is now the fashion to make a quick arrest of a suspect or suspects and present the case to the grand jury. More often than not the grand jury refuses to indict. In the cases where it does indict, a trial is held and a speedy acquittal secured.

No one should be deceived into believing that an improvement has taken place over the old days when not even an arrest was made. In those days the law-enforcement officers frequently could truthfully say they were not present. The courts could say a case was not before them. Both could join in denouncing mob action. The present procedure is even more outrageous because it uses the forms of the law to place the stamp of approval on lawlessness and murder.

Violence has flared in the Birmingham, Ala., area in an effort to prevent Negroes from buying and occupying homes. Dynamite has been used freely, and mobs have threatened further violence. Having become emboldened by their attacks upon Negroes, masked mobs have now turned to threatening and attacking white, including white women. They have addressed themselves to the regulation of marital affairs, the care of the home and children, to private associations between individuals, and to the guests one may invite into one's home. In free America our citizens, both black and white, are subject to the whims and brutalities of storm troopers. All this and no authority, Federal or State, seemingly willing or able to call a halt.

It is glaringly evident, therefore, that part 1 of title II of H. R. 4682 is a necessity if law and order and the rights of individuals are to be preserved.

With respect to part 3 of title II, it is well known that Negro citizens for many years have had to accept humilating and discriminatory second-class travel in interstate movement while paying first-class fare. The key to this inequality and robbery has been segregation, for inherent in segregation is discrimination. The myth in the phrase "separate but equal" has long ago been exposed. There can be no equality with segregation in the services and treatment of the citizen by the Nation or any subdivision thereof.

It may be asked, as it has been asked before, why the Federal Government should act in these matters. Why not leave the guaranty of civil rights to the several States? The inquiry deserves an answer.

First, Americans are citizens both of the United States and the States in which they happen to reside. As United States citizens they have certain rights which may not be denied or abridged. By their adherence to the Constitution, the several States are obligated to secure to the citizens within their borders the rights and privileges of dual citizenship. If any State fails in this duty, the rights of the United States citizens must be protected by the Government of the United States.

We cannot have nullification as an intrenched policy or we will have in truth no union. Thus, the States which deny or abridge the rights

of citizens, or aid and abet denial or abridgement by means of studied and long-standing indifference or neglect, and which oppose the entrance of the Federal Government to correct the evils, are in reality seceding from the United States and setting up a state of their own. This cannot be tolerated.

Second, certain of the States have demonstrated over a period of a half century that they are either unable or unwilling to guarantee civil rights to all citizens, without distinction as to race, color, religion, or national origin. How much longer will these millions of mistreated citizens have to wait? After 50 years a group of Southerners—not New Yorkers—asserts in this year of 1949 that a "pattern of violence" exists in the South. Shall we wait another 50 years in order to be sure that the States will not act? Surely not.

In his Lincoln Memorial speech in June 1947, President Truman declared:

> We cannot wait another decade or another generation to remedy these evils. We must work as never before to cure them now * * * we can no longer afford the luxury of a leisurely attack upon prejudice and discrimination * * * we cannot, any longer, await the growth of a will to action in the slowest State or the most backward community.

The millions who live helplessly in humiliation and fear echo that sentiment.

Third, it is no secret that we are in a contest trying to persuade the peoples of the world that they should follow the democratic way of life, rather than the totalitarian path held out to them. This is the task of our Federal Government which has had thrust upon it the leadership of the nations in the postwar world. It is not a simple task at best; with the constantly emerging evidences of totalitarian terrorism within our own State the difficulties are multiplied. If this be democracy, why should any people choose it as a way of life? If they do not choose it, what will become—in the not-too-distant day—of such freedom as we have? Will we have permitted the indulgences, the prejudices and hatreds, the sectional prides, and the myths of supremacy and superiority of the stubborn few to lose for our people the priceless liberties and the shining promise of this great Nation in the Western World? For freedom, as so often has been said, is indivisible. The rights of all must be secured or the rights of none will be secure.

Mr. Truman said again in his 1947 speech:

> Our case for democracy should be as strong as we can make it. It should rest upon practical evidence that we have been able to put our own house in order. Our National Government must show the way.

The enactment of an effective antilynching law and the Celler civil-rights bill will help our Government to show the way.

Mr. BYRNE. Very nicely presented. Are there any questions, gentlemen?

Mr. DENTON. Yes. I would like to ask you the same question that I asked Mr. Levy.

In some of these antilynching bills there is a provision that a civil action may be brought by the victim or a family against the community in which a lynching occurred. What is your reaction to that?

Mr. PERRY. I think that is a very salutary provision, Mr. Congressman. First, I believe that the principle of community responsibility, where its normal legal and protective processes have broken down, will tend to insure the selection of law-enforcement officers, the taking of proper precautions with respect to jails and other places of custody, and will have a very salutary effect upon the community itself in terms of responsibility.

The other thing I suggest is that a man who is struck down, killed brutally, and summarily, who leaves a family of 10 children, as was the case with Isaac Nixon, is certainly entitled to have his family, at the very least, be entitled to some form of indemnification. I do not think $10,000 would indemnify, but they are entitled to some assistance.

Mr. DENTON. When you think about the statement made, actually you would be using un-civil rights; you would be violating civil rights to enforce civil rights in that case. You are enforcing guilt by association, and it would be a punishment on people who are in no way responsible, but who happen to be associated.

Mr. PERRY. I do not think that is altogether true, Congressman. You have had a long history in Anglo-Saxon law, running from the Statutes of Westminster right on up really to the present in which you have had local responsibility and penalization when the law-enforcement processes in your local communities break down.

You have in South Carolina, for example, a statute which penalizes and indemnifies and provides for civil damages if a person is lynched in the State. You have it in California. You have it in Illinois.

I happen to know that the South Carolina statutes and the Illinois statutes have been held constitutional by the highest State courts in the respective States.

Now, what you have there is not guilt by association, but the responsibility of a corporate body. The county is a corporate body for certain purposes. It is a kind of guilt by association that a negligent stockholder or board of directors has when they permit the officers of the corporation to do something which is unlawful.

Mr. DENTON. The other question I would like to ask you, and the one I asked Mr. Levy, is this: Mr. Brooks Hays and I think Mr. Lemke have bills in this group of bills which provide in substance, first, that the Government will act in these antilynching cases; but, second, they provide that the State may set up procedure whereby the Attorney General or somebody acting under the Governor of the State will prosecute the proceeding in a county other than that in which a lynching took place. Then they provide that the Government will only step in when the State does not have this procedure, or, when they do have the procedure and do not act in a reasonable time. The theory is that you would have the cooperation and the active participation in these Southern States in particular to help stamp out lynching where you would not have it otherwise. What do you think about that?

Mr. PERRY. I think the record in most of your so-called prosecutions in the South have belied any notion that such prosecutions would conceivably occur under Congressman Hays' proposal as bona fide prosecutions and in good faith.

The kind of thing which happened, for example, in the Mallard lynching in Georgia, in which the judge and the members of the jury got up and said that they believed the defendants and believed that the widow was unworthy of belief, and the kind of thing which happened in the Isaac Nixon case, to which I have already alluded, in which the jury, as I recall it, was out for less than an hour—30 minutes or 26 minutes—and brought back a verdict of not guilty, would be the

result. I think fundamentally most of the Southern States—and the record, I think, demonstrates it—have just gone through the motions. I am satisfied that most of the State officers and persons and organizations and Members of Congress who are opposed to effective antilynching legislation would certainly welcome the Brooks Hays proposal as one of the ways of negative Federal authority.

It would be a further safeguard for the press, lynching, intimidation, and otherwise.

I would like to say further on that question of penalties—and there have been some shifts in penalties—I think the penalties included in the Celler bill represent a very substantial improvement over the existing sections of the code. You have to draw a line if you are going to give a person a life sentence just for walking against a red light or something. You would undoubtedly get to the point where you would not get any prosecutions, or serious prosecutions.

However, it seems to me that the penalties imposed here will be very good as a compromise between the one extreme where you would not get any prosecution and the other extreme, to provide a sufficient penalty to actually serve as a deterrent.

Mr. LANE. Which are the three States where you have no representation of your organization? You said there were 45 States where you had representation; which are the other 3?

Mr. PERRY. I would assume that they are Vermont, New Hampshire, and Maine. They have very small Negro populations. I believe we have a branch in South Dakota; I know we have in Nevada and Montana. So those would be the only three States where we do not have any branches or chapters.

Mr. LANE. But your organization in Massachusetts works pretty well in those other three States?

Mr. PERRY. You mean Maine, Vermont, and New Hampshire?

Mr. LANE. Yes.

Mr. PERRY. I assume that we do not have anything there. We have a very active group of branches in Massachusetts and we have a New England State conference which purports to cover the whole New England area. I assume that such problems that would come within the purview of the association rising in Maine, Vermont, and New Hampshire would be handled by our conference.

Mr. LANE. Your Massachusetts organization is sending counsel in to represent a man in Rochester, N. H., in a murder case right now?

Mr. PERRY. Yes. Undoubtedly our New England State conference would deal with a problem in those other States.

Mr. LANE. That is all.

Mr. BYRNE. Are there any other questions?

If not, thank you very much; that was a very nicely presented statement.

Mr. PERRY. Thank you.

Mr. BYRNE. The committee will adjourn now subject to the call of the Chair.

(Whereupon the subcommittee adjourned subject to the call of the Chair.)

ANTILYNCHING AND PROTECTION OF CIVIL RIGHTS

WEDNESDAY, JUNE 29, 1949

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 3 OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 10:30 a. m., Hon. William T. Byrne (chairman) presiding.

Mr. BYRNE. The committee will please be in order. Ladies and gentlemen, we are about to conduct a hearing upon certain matters that have occurred in the State of Alabama. During the hearing there shall be no pictures taken, no flashlights used. This is a hearing in connection with other hearings we have had upon civil rights. These hearings have been going on for some weeks. We are seeking light on a situation which occurred in Alabama and have some witnesses here who will testify to their knowledge of those situations, conditions, and happenings. Therefore, as I have already said, there shall be no pictures taken and everybody will please be quiet, as I know they will be.

We shall proceed now to the hearing of the facts to be told by those who have knowledge of them.

I should like to advise those who are present that the House is meeting at 11 o'clock and it may be necessary for some of the members to leave to answer to a quorum call. I do not intend to leave. I shall stay here so that we may proceed without interruption. I make this announcement now so that there will not be any question concerning procedure.

The first witness will be Mr. Stallworth.

STATEMENT OF CLARKE STALLWORTH, JR., BIRMINGHAM, ALA.

Mr. Stallworth, will you kindly give us your full name?
Mr. STALLWORTH. Clarke Stallworth, Jr.
Mr. BYRNE. And you residence, Mr. Stallworth?
Mr. STALLWORTH. Birmingham.
Mr. BYRNE. Birmingham, Ala.?
Mr. STALLWORTH. That is right.
Mr. BYRNE. What is your home address?
Mr. STALLWORTH. 2121 Sixteenth Avenue South.
Mr. BYRNE. What is your occupation, Mr. Stallworth?
Mr. STALLWORTH. Newspaper reporter.
Mr. BYRNE. How long have you been a newspaper reporter?
Mr. STALLWORTH. For about 15 months.
Mr. BYRNE. Will you also tell us what is your age?
Mr. STALLWORTH. Twenty-three.

Mr. BYRNE. We are not going to swear any of the witnesses, if that is agreeable to the members of the committee; but simply take their statement. Mr. Stallworth, will you proceed and tell us in your own language, and in your own way, exactly what you have in mind and that you wish to impart to us, concerning your knowledge of certain conditions existing or of certain happenings within the last few weeks in Alabama.

Mr. STALLWORTH. Mr. Chairman, I thought the committee would ask me questions. I would rather have it that way.

Mr. BYRNE. You would rather have it that way?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. I should be very happy to ask you some questions. You say you are a newspaper reporter?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. Did you tell us how long you have been a reporter?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. And how long is that?

Mr. STALLWORTH. Fifteen months.

Mr. BYRNE. As a reporter, where has your work been done and for what paper?

Mr. STALLWORTH. The Wilmington (N. C.) Star and the Birmingham Post.

Mr. BYRNE. As a reporter for those two papers you have been engaged on certain assignments, given you, I assume, by the city editor? Is that from whom you would get your assignments?

Mr. STALLWORTH. That is correct.

Mr. BYRNE. Will you tell us what those assignments were?

Mr. STALLWORTH. I have had many assignments. One of them was to investigate—that is, one of them by the city editor of the Post, was to investigate a story in Sumiton. I think that is what you are driving at?

Mr. BYRNE. Exactly. When did you get that assignment?

Mr. STALLWORTH. On June 20.

Mr. BYRNE. June 20, 1949; is that correct?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. What did you do upon receiving the assignment?

Mr. STALLWORTH. I went to Dora, Ala.

Mr. BYRNE. How far is that from Birmingham?

Mr. STALLWORTH. Approximately 25, 30 miles.

Mr. BYRNE. Twenty-five or thirty miles?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. You went there by car, did you?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. Did you have anybody with you?

Mr. STALLWORTH. No, sir.

Mr. BYRNE. You were alone?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. Did you have any camera, or anything of that kind?

Mr. STALLWORTH. Yes, sir; a camera.

Mr. BYRNE. Did you have more than one camera?

Mr. STALLWORTH. No, sir; one camera.

Mr. BYRNE. Tell us what you did when you got to Dora.

Mr. STALLWORTH. I talked to Mrs. Irene Burton, Billie Fay Burton, and Sally Burton.

Mr. BYRNE. Who were these people?

Mr. STALLWORTH. Those three women, a mother and two daughters, claimed they were beaten by the Ku Klux Klan.

Mr. BYRNE. Tell us what they said in general outline.

Mr. STALLWORTH. They said that the Klan came to their house on the night of June 3 and took them and three men out to a wooded spot and lashed the mother and one of the daughters and two of the men; lashed two of the men, threatened two of the men and one of the women with hanging.

Mr. BYRNE. Threatened them with hanging?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. Did they tell you the language that was used, or anything of that kind or was it just a general statement that they were threatened?

Mr. STALLWORTH. I remember just the general statement that they were threatened. Ropes were put around their necks. That is all they said.

Mr. BYRNE. They said that ropes were put around their necks?

Mr. STALLWORTH. That is correct.

Mr. BYRNE. What did they say the time was that this took place?

Mr. STALLWORTH. As far as I can remember it was around 11 o'clock; I am not sure of that.

Mr. BYRNE. Did they indicate by any pictures that may have been taken how the ropes were placed around their necks?

Mr. STALLWORTH. No, sir.

Mr. BYRNE. Did they indicate about how many people were there, about how many people came there?

Mr. STALLWORTH. They said approximately 150 men.

Mr. BYRNE. Did they describe their attire, their dress?

Mr. STALLWORTH. Yes. They said they wore hoods and had the insignia that they thought was the Ku Klux Klan.

Mr. BYRNE. Did they indicate the color of the garments?

Mr. STALLWORTH. Yes, sir; white.

Mr. BYRNE. Did they say that they could identify any of the people there, any individuals?

Mr. STALLWORTH. No, sir; they did not tell me that specifically.

Mr. BYRNE. They did not say that they would know any of the individuals?

Mr. STALLWORTH. They knew one man by his voice. They said they could identify him by his voice.

Mr. BYRNE. Did they say how they happened to know him by his voice?

Mr. STALLWORTH. They said they had known him before.

Mr. BYRNE. Did they give you his name?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. What was the name?

Mr. STALLWORTH. Oscar Lee Calvert.

Mr. BYRNE. Did they indicate that they had told him they knew who he was?

Mr. STALLWORTH. No, sir.

Mr. BYRNE. Did you take down in writing any of the statements that were made by these men and women?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. These three women?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Did you see the three men who were taken also?
Mr. STALLWORTH. I saw one of the men.
Mr. BYRNE. Did you talk with him?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. What is his name?
Mr. STALLWORTH. Troy Morrison.
Mr. BYRNE. What did Morrison tell you, in substance?
Mr. STALLWORTH. He said that he was taken out with—he corroborated the women's stories. He said that he was taken out and beaten. That is substantially what he said.
Mr. BYRNE. Did he tell you what sort of beating it was? Did he describe the beating?
Mr. STALLWORTH. Yes, sir; he said it was with a lash, some kind of a belt, a mining belt.
Mr. BYRNE. A leather belt?
Mr. STALLWORTH. He described it as a mining belt about 6 feet long.
Mr. BYRNE. A mining belt about 6 feet long?
Mr. STALLWORTH. Yes, sir.
Mr. JENNINGS. A belt such as would be used in the operation of machinery?
Mr. STALLWORTH. Yes, sir.
Mr. JENNINGS. To operate a pulley?
Mr. STALLWORTH. I guess so. He described it as a mining belt.
Mr. JENNINGS. It was not a belt that a man would wear around his waist?
Mr. STALLWORTH. No, sir.
Mr. BYRNE. And you say it was about 6 feet long?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Did he say anything about its width, or anything of that kind?
Mr. STALLWORTH. He showed it to me; it was about 3 or 4 inches.
Mr. BYRNE. That is, he indicated the width of it with his hands?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Did he say how many times he had been hit with the belt, or struck with the belt?
Mr. STALLWORTH. I forget, but I think it was around three or four times.
Mr. BYRNE. In what manner was that belt applied to him? Was he strung up or was he on the ground, or was he standing? What was his position at the time he was struck?
Mr. STALLWORTH. He told me that one of the men sat on his head and one of the men sat on his feet and he was on the ground.
Mr. BYRNE. You say he told you that one of the men sat on his hands?
Mr. STALLWORTH. No, sir; on his head.
Mr. BYRNE. On his head?
Mr. STALLWORTH. On his head and shoulders.
Mr. BYRNE. And another man sat on his feet?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Was he lying flat on the ground? Was he face down?
Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. Was he stripped or dressed?
Mr. STALLWORTH. I do not know, sir.
Mr. BYRNE. You do not remember whether he said anything as to that?
Mr. STALLWORTH. No, sir.
Mr. BYRNE. You do not remember his saying that he had been stripped?
Mr. STALLWORTH. No, sir.
Mr. BYRNE. That is all that you remember Morrison telling you; is that right?
Mr. STALLWORTH. That is correct.
Mr. BYRNE. Where was it that you saw Morrison; was it at his home?
Mr. STALLWORTH. At his home.
Mr. BYRNE. Is that in Dora, too?
Mr. STALLWORTH. In Dora.
Mr. BYRNE. Was anybody present besides you and Morrison when you were talking to him?
Mr. STALLWORTH. His son; I do not know his son's name.
Mr. BYRNE. How old a boy is the son?
Mr. STALLWORTH. Seventeen, eighteen.
Mr. BYRNE. In other words, this conversation took place between Morrison and you, with the son present.
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Was he the only man of the three whom you saw?
Mr. STALLWORTH. That is correct.
Mr. BYRNE. And you saw these three women; the mother and the two daughters; is that correct?
Mr. STALLWORTH. That is right.
Mr. BYRNE. Where did you interview them, at their home?
Mr. STALLWORTH. No, sir; at their grandmother's home; Mrs. Burton's mother's home.
Mr. BYRNE. At the home of the grandmother of the two daughters?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. That is, the mother of the mother of the daughters?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. How many were present at the time you were making your inquiry?
Mr. STALLWORTH. Just those three.
Mr. BYRNE. The grandmother was not there?
Mr. STALLWORTH. No, sir.
Mr. BYRNE. Tell us what those three women told you, in substance, regarding this matter.
Mr. STALLWORTH. They said that they were taken out and beaten by a group of men.
Mr. BYRNE. Did they say what hour of the night it was?
Mr. STALLWORTH. I think it was around 11 o'clock at night, as far as I can remember.
Mr. BYRNE. Did they describe where they were beaten; I mean, how they were beaten?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Tell us what they said.
Mr. STALLWORTH. They described it in the same manner as Morrison had described it, with the belt.

Mr. BYRNE. They used that same belt?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Were they put on the ground?
Mr. STALLWORTH. I do not remember.
Mr. BYRNE. You do not remember whether they said they were put on the ground or whether they were beaten with the belt while they were standing, is that correct?
Mr. STALLWORTH. That is right.
Mr. BYRNE. Did they say in what part of the body they were struck?
Mr. STALLWORTH. Yes, sir; it was around their hips.
Mr. BYRNE. Did they say whether they were dressed or undressed?
Mr. STALLWORTH. No, sir; I do not remember that.
Mr. BYRNE. How many of them said that? Did the three of them say it?
Mr. STALLWORTH. All three of them—no, all three of them said that the mother and one of the daughters—Sally was one of the daughters.
Mr. BYRNE. Was she older than the other girl?
Mr. STALLWORTH. No, sir; she was the youngest, 16.
Mr. BYRNE. She was 16 years of age?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. And the mother was a woman about what age?
Mr. STALLWORTH. About 39.
Mr. BYRNE. And the other daughter was not struck?
Mr. STALLWORTH. That is correct.
Mr. BYRNE. She was not touched at all?
Mr. STALLWORTH. I do not know about not being touched. She was not whipped, according to her.
Mr. BYRNE. That is according to her statement.
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. The mother and Sally said that they were whipped with this belt?
Mr. STALLWORTH. That is correct.
Mr. BYRNE. The same belt with which Morrison was whipped?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Did they say how long all this took, in time?
Mr. STALLWORTH. I do not remember asking them that.
Mr. BYRNE. How far was the place where they were taken to from the house from which they were taken?
Mr. STALLWORTH. As far as I can remember, it was about 4 miles.
Mr. BYRNE. How were they taken from their homes to that particular place?
Mr. STALLWORTH. By automobiles, according to what they said.
Mr. BYRNE. And did the whole group of men who were present go to that spot, or did some remain while some others went to where they were beaten?
Mr. STALLWORTH. I would not know that, sir.
Mr. BYRNE. Did they say anything to you about that?
Mr. STALLWORTH. They said nothing about it; nothing that I can remember.
Mr. BYRNE. Did they say how many were present, in their judgment, when the beating with the strap took place?
Mr. STALLWORTH. They said about 150 men, they estimated around 150 men.

Mr. BYRNE. But what I want to find out is whether or not those men divided and some stayed in Dora, 4 miles from where this occurrence took place, and some went on to where the occurrence took place. That is what I want to find out.
Mr. STALLWORTH. I do not know that.
Mr. BYRNE. That you do not know.
Mr. STALLWORTH. No, sir.
Mr. CELLER. Young man, did you see any evidence of violence on the face or body of any of these so-called victims?
Mr. STALLWORTH. No, sir.
Mr. CELLER. Did you examine to see whether there was any evidence of violence?
Mr. STALLWORTH. No, sir. I examined their faces. There was no evidence of beating on their faces.
Mr. CELLER. I did not hear that; what was that?
Mr. STALLWORTH. There was no evidence of beating on their faces.
Mr. CELLER. Was there any reason given for the beating; was there any motive expressed?
Mr. STALLWORTH. They told me of no motive.
Mr. CELLER. Did you attempt to examine to find out whether there was any motive or reason?
Mr. STALLWORTH. Yes, sir.
Mr. CELLER. What did you find?
Mr. STALLWORTH. One of the girls told me that they had been dating these three men and evidently the Klan did not like that, or whoever whipped them.
Mr. CELLER. What was the name of the girl that said that?
Mr. STALLWORTH. Billie Fay.
Mr. CELLER. How old is she?
Mr. STALLWORTH. Eighteen.
Mr. CELLER. Did you have any conversation with the mother, other than what you have already stated here?
Mr. STALLWORTH. No, sir.
Mr. CELLER. She is the mother of these two girls?
Mr. STALLWORTH. Yes, sir.
Mr. CELLER. Are there any other children besides those girls?
Mr. STALLWORTH. There were five children.
Mr. CELLER. Who are the other children besides the ones you have mentioned?
Mr. STALLWORTH. I do not know that.
Mr. CELLER. Did you discuss with the men who were beaten any reason for the beating?
Mr. STALLWORTH. Mr. Morrison said he knew of no reason; the one man I talked to said he knew of no reason why they were beaten.
Mr. CELLER. Did you go to the homes of any of these women or the man Morrison?
Mr. STALLWORTH. Yes, sir.
Mr. CELLER. What did you find there that might shed some light on the subject?
Mr. STALLWORTH. I think I have told all that, sir.
Mr. CELLER. Nothing beyond what you have already said?
Mr. STALLWORTH. That is correct.
Mr. CELLER. Were these people white or colored?

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Mr. STALLWORTH. White.
Mr. CELLER. All white?
Mr. STALLWORTH. All white.
Mr. CELLER. Do you know whether there was any peace officer, policeman, in uniform or out of uniform, among these men who allegedly did this beating?
Mr. STALLWORTH. No, sir; I know of no officer.
Mr. CELLER. Did you check whether there was a peace officer among them?
Mr. STALLWORTH. The incident happened about 3 weeks before the time I went there. We could not check.
Mr. CELLER. Did you see the statement made by Gov. James E. Folsom, of Alabama, which I am going to read? I am reading from a dispatch appearing in the New York Herald Tribune dated June 26, this year, from Birmingham, Ala. The statement of the Governor is as follows:

"Hooded thugs have been trying to take justice into their own hands," Governor Fulsom said. "These would be Hitlers have prowled the streets at night, burned their crosses of hate and frightened innocent women and children and beating up veterans and workers. But the stamp of dishonor is upon them. There is no rhyme or reason for their existence today. They won't be tolerated as long as I am Governor. Your home is your castle, defend it in any way necessary."

Did you see that statement?
Mr. STALLWORTH. Yes, sir; I saw it.
Mr. CELLER. Do you know of any cases where veterans were beaten up, as indicated in that statement.
Mr. STALLWORTH. Only what I read in the paper, sir. I had nothing to do with the story.
Mr. CELLER. Do you know of any cases where there were burnings of crosses?
Mr. STALLWORTH. Yes, sir.
Mr. CELLER. Did you see any?
Mr. STALLWORTH. Yes, sir; I saw a burned cross.
Mr. CELLER. Where did you see it?
Mr. STALLWORTH. At the home of Mrs. Fred Hoaglund.
Mr. CELLAR. When was that?
Mr. STALLWORTH. That was on June 20.
Mr. CELLER. And did you have any conversation with her?
Mr. STALLWORTH. Yes, sir.
Mr. CELLER. Will you state that conversation?
Mr. STALLWORTH. She told me that the cross was not burned by the Klan. She said, "We are proud of the Klan. It is the only law we have in Walker County."
Mr. CELLER. Did she say who was responsible for the burned cross?
Mr. STALLWORTH. She thought it was—she is a taxi driver, and she thought it was competition in the taxi business.
Mr. CELLER. Did she give you the name of the taxi driver?
Mr. STALLWORTH. No, sir.
Mr. CELLER. Did you explore that situation any further?
Mr. STALLWORTH. No, sir.
Mr. CELLER. Did you see any other burning crosses?
Mr. STALLWORTH. No, sir.

Mr. BYRNE. Was anything said by any of those people you interviewed relative to putting a rope around their neck, or anything of that kind?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Tell us what was told you about that and who said it.
Mr. STALLWORTH. I talked to Billie Fay first. She is the 18-year-old daughter. She said that a rope had been put around—let me see—her sister's neck, I think, as far as I can remember.
Mr. BYRNE. That is the 16-year-old girl?
Mr. STALLWORTH. That is right.
Mr. BYRNE. Was that the girl that was beaten?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. The 16-year-old girl?
Mr. STALLWORTH. So they told me.
Mr. BYRNE. Tell us what she said now once more.
Mr. STALLWORTH. She said the rope was put around her neck by one of the men; I forget which one of the men. Then they threw it over a limb and pulled it up until they were on tiptoe.
Mr. BYRNE. They pulled her up on her tiptoes?
Mr. STALLWORTH. I do not know about her. They said that they drew the man up until he was on tiptoe, and threatened to hang him.
Mr. BYRNE. Did they say that she was lifted off the ground?
Mr. STALLWORTH. No, sir.
Mr. CELLER. Were there any other victims of these individuals who acted unlawfully, that you know of?
Mr. STALLWORTH. That I talked to?
Mr. CELLER. That you know of.
Mr. STALLWORTH. No, sir.
Mr. BYRNE. Are you the man who was injured, or struck?
Mr. STALLWORTH. Yes, sir.
Mr. KEATING. Before you get into that, Mr. Chairman, may I ask a question?
Mr. BYRNE. Yes.
Mr. KEATING. Do I understand that none of these women told you that any of this hooded crowd had told them why they were having this happen to them?
Mr. STALLWORTH. That is correct. One of the girls said it might have been because they were dating these men.
Mr. KEATING. But did they all say that these men came and took them away, and that during all of this episode at no time stated anything to them about why it was happening?
Mr. STALLWORTH. No, sir; they asked them questions.
Mr. KEATING. The men asked them questions?
Mr. STALLWORTH. That is right.
Mr. KEATING. What kind of questions did they ask?
Mr. STALLWORTH. About their personal affairs with the men.
Mr. KEATING. With these men whom they had been dating?
Mr. STALLWORTH. That is correct.
Mr. KEATING. What kind of questions did they ask?
Mr. STALLWORTH. One of the girls said that one of the hooded men asked her if she had ever slept with one of the men.
Mr. KEATING. What did she say?
Mr. STALLWORTH. She said "No."

Mr. KEATING. Did they ask the mother questions about relations with these men?

Mr. STALLWORTH. I did not ask the mother about that. I asked the 18-year-old daughter about that. She told most of the story.

Mr. KEATING. And all of the conversation between the hooded men and the women had to do with the relations between these young women and certain men in the locality; is that right?

Mr. STALLWORTH. I do not know about all the conversation, sir; some of it did.

Mr. KEATING. I mean all that they told you had to do with these relations?

Mr. STALLWORTH. That is correct.

Mr. KEATING. There was nothing involved in that conversation or throughout the occurrence regarding any race relations or anything of that kind?

Mr. STALLWORTH. No, sir. They told me nothing about that.

Mr. KEATING. Did any of the women say that they had complained about these occurrences to the officials of the locality?

Mr. STALLWORTH. They said they had not.

Mr. KEATING. They said they had not done so?

Mr. STALLWORTH. That is correct.

Mr. KEATING. Did they give any explanation as to why they had not complained to the Alabama officials about it?

Mr. STALLWORTH. No, sir.

Mr. KEATING. Did they state that the Alabama officials, in words or in substance, were derelict in their duties in any way?

Mr. STALLWORTH. Mr. Morrison said that; he said it would do no good.

Mr. KEATING. And that was his only explanation for not reporting to them—that it would do no good?

Mr. STALLWORTH. That is correct.

Mr. KEATING. He did not say that he had gone to them and had been rebuffed in any way?

Mr. STALLWORTH. No, sir.

Mr. KEATING. That is all.

Mr. JENNINGS. Was this home to which you went where you interviewed these women in the town of Dora?

Mr. STALLWORTH. Yes, sir; I think it was.

Mr. JENNINGS. Where was the home from which the woman and the two daughters were taken on the night that they were taken?

Mr. STALLWORTH. It was next door to the house where I interviewed them.

Mr. JENNINGS. Was it within the town of Dora?

Mr. STALLWORTH. I think it was.

Mr. JENNINGS. What is the population of Dora?

Mr. STALLWORTH. I do not know, sir; it is a small town.

Mr. JENNINGS. Is this mother of these two girls a widow?

Mr. STALLWORTH. Yes, sir; she is a widow.

Mr. JENNINGS. And you say she is about how old?

Mr. STALLWORTH. Thirty-nine.

Mr. JENNINGS. As to the mother and the girl who was whipped, did you say that they both or either of them was on the ground and somebody sat on their head and feet, when this occured; or were they whipped standing up?

Mr. STALLWORTH. I do not know that.

Mr. JENNINGS. You did not find out about that?

Mr. STALLWORTH. No, sir.

Mr. JENNINGS. Was this man Morrison in the home of these women that night?

Mr. STALLWORTH. So they told me.

Mr. JENNINGS. How old a man is he?

Mr. STALLWORTH. My guess is about 40.

Mr. JENNINGS. Did he deny any improper relations with these women?

Mr. STALLWORTH. I talked with him before I talked with the women.

Mr. JENNINGS. What did he say about that?

Mr. STALLWORTH. He said he knew of no reason why they had come there.

Mr. JENNINGS. Who was it said that they recognized the voice of one of the men?

Mr. STALLWORTH. Billie Fay Burton.

Mr. JENNINGS. Is that the 18-year-old girl?

Mr. STALLWORTH. Yes, sir.

Mr. JENNINGS. That is all.

Mr. BYRNE. Let us proceed from that point. Have you told us substantially everything regarding this matter between the time that you started out to investigate and the time when you interviewed those three women?

Mr. STALLWORTH. Just about.

Mr. BYRNE. After that, what did you do in connection with your investigation? What else did you do in following out your orders?

Mr. STALLWORTH. I took pictures of the three women.

Mr. BYRNE. Where did you take those, in their home?

Mr. STALLWORTH. In their grandmother's home—no; it was in front of the house where they were taken.

Mr. BYRNE. You took those pictures, you had all of that with you; then did you proceed to get into your car and start back home, or back to your headquarters?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. Did you go back to your headquarters?

Mr. STALLWORTH. There is one point that I would like to make—yes, sir; I went back to Birmingham. But I was told of a beating that we thought had happened and I went back to the office, wrote my story, got the pictures out, and went back to investigate that beating.

Mr. BYRNE. When?

Mr. STALLWORTH. That afternoon.

Mr. BYRNE. Where was that?

Mr. STALLWORTH. That was in Sumiton, the one she told me about.

Mr. BYRNE. How far is Sumiton from Dora?

Mr. STALLWORTH. About 5 miles.

Mr. BYRNE. What did your investigation show?

Mr. STALLWORTH. I went to this woman's house and she said that there had been no beating, but that a man she called drunk had threatened her with a Klan visit at night.

Mr. BYRNE. Just one man?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. That is all?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. And that is all that you did about that?
Mr. STALLWORTH. About her; yes, sir.
Mr. BYRNE. Did you take any picture of her?
Mr. STALLWORTH. No, sir.
Mr. BYRNE. What did you do after that?
Mr. STALLWORTH. This woman also told me of the cross burning, which I have told you about, at Mrs. Hoaglund's house. I went to see her to talk to her about it. She denied that it was the Klan that burned the cross. Then I went to see a Negro fortuneteller who I had been told had been visited by the Klan. She admitted the Klan had visited her, but would say nothing about it.
Mr. BYRNE. So you got no information there?
Mr. STALLWORTH. That is correct.
Mr. BYRNE. Then from there you proceeded where?
Mr. STALLWORTH. I went to the home of Bill Lowry, who was one of the men flogged in the Burton case. He was not at home. I talked to his mother and his brother who had no information to give me. Then I went to look for the deputy, a man named Cox—a company deputy in Sumiton.
Mr. BYRNE. What is his first name?
Mr. STALLWORTH. I do not know his first name.
Mr. CELLER. What do you mean by a "company deputy"?
Mr. STALLWORTH. A mining company. They call him a company deputy.
Mr. BYRNE. In other words, a sort of policeman.
Mr. STALLWORTH. That is correct.
Mr. BYRNE. A watchman, let us say?
Mr. STALLWORTH. Something like that.
Mr. CHELF. One of those men who might be deputized by the sheriff to help enforce the law?
Mr. STALLWORTH. Yes, sir.
Mr. CELLER. Would you say that he was under the direction and supervision of the law enforcement authorities?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Did you get any information from him?
Mr. STALLWORTH. He was not at home.
Mr. BYRNE. Where did you go after that?
Mr. STALLWORTH. I got to his home and Mrs. Hoaglund drove up in her taxi and told me that Roscoe Fowler, a man she called the ex-postmaster, was sitting in a store in downtown Sumiton and could give me some information. There was a little boy with me at the time who showed me where Mr. Cox lived; I do not know his name. He got out of the car after that and I went to downtown Sumiton, to the store.

A man on the outside asked me, or rather I asked him if he was Mr. Fowler and he said, "No, Mr. Fowler is inside." He said, "Park your car right over here." I parked my car and went inside the store. The name of the store was Sumiton Auto Supply. A man was sitting in the back of the store at a small desk. I introduced myself to him and asked him if he had the information which Mrs. Hoaglund had told me about. He said, "Well, what are you looking for?" I told

him I was looking for any evidence of beatings either by hooded men or the Ku Klux Klan. He said: "Call me a Klan, will you, you son-of-a-bitch," and struck me in the face.
Mr. BYRNE. One minute; let us get this story straight now. Will you give us that recitation again? I did not hear all of it.
Mr. STALLWORTH. From where, sir?
Mr. BYRNE. From the point where you started to tell him what you were after.
Mr. STALLWORTH. I introduced myself to him and asked him if he had the information which Mrs. Hoaglund had told me about—had told me that he had. He asked me what I was looking for. I told him I was looking for evidence of any beatings either by hooded men or by Klansmen. And at that he said: "Call me a Klan, will you; you SOB?" and struck me in the face.
Mr. BYRNE. He struck you with what?
Mr. STALLWORTH. His fist.
Mr. BYRNE. Where did he strike you; what part of your face?
Mr. STALLWORTH. About here, I guess [indicating on face]. He came out of the chair, and we wrestled in back of the store for, I imagine, 10 seconds. Then I noticed the man in front of the store coming in with a wrench in his hand; or what I took to be a wrench. I guess it was a wrench. The three of us wrestled in the store for maybe 10 seconds more and then Fowler, the big man, grabbed me around like that [illustrating], pinned my arms to my side, and said, "Give it to him; give it to him." The other man, whose name was Glen Godfrey picked up a hammer off the counter—this was a combination filling station and hardware store—he picked up a hammer and about that time I broke out of Fowler's grasp and pushed them both over the counter, overturning the counter, and left. Godfrey followed me and threw the hammer at me outside the store.

I saw Mrs. Hoaglund sitting in her cab and I asked her whether she would take me some place and she shook her head.

A bus stopped across the street in this small town and I ran over and jumped on it. I bought a ticket for Birmingham and rode about a half a mile and saw a highway patrol car coming down the road. I flagged it through the window of the bus, got in the car with the highway patrolman, and we went back to Sumiton to get my car.

Then we went to Jasper and we swore out warrants for the two men. They were later arrested and are on $300 bond now.
Mr. JENNINGS. How much bond?
Mr. STALLWORTH. $300 apiece.
Mr. CELLER. Were there any other arrests that you know of?
Mr. STALLWORTH. No, sir.
Mr. CELLER. Has any grand jury been impaneled or called with reference to these occurrences?
Mr. STALLWORTH. It has not been called with reference to these occurrences; no, sir; not to my knowledge, at this time.
Mr. CELLER. The grand jury may have been called.
Mr. STALLWORTH. By now? I have not heard.
Mr. CELLER. What is the name of this county, Jefferson County?
Mr. STALLWORTH. This happened to me in Walker County. That is next door to Jefferson County.
Mr. CELLER. Is there any grand jury, or was there any grand jury impaneled in Walker County or Jefferson County, that you know of?

Mr. STALLWORTH. No, sir; none in Walker County, as far as I know. The grand jury was in session in Jefferson County. It is recessed now.

Mr. CELLER. Has the grand jury in Jefferson County, if you know, considered these cases?

Mr. STALLWORTH. I do not think they have, sir. They have been in recess.

Mr. CELLER. How many arrests were made, if you know?

Mr. STALLWORTH. Just those two in my case, so far as I know.

Mr. CELLER. Has there been any trial yet?

Mr. STALLWORTH. No, sir. The trial is set for August 1.

Mr. CELLER. In all of the cases?

Mr. STALLWORTH. No, sir; there have been no arrests except the two in my case.

Mr. CELLER. In those two cases the trial has been set for August 1?

Mr. STALLWORTH. That is correct.

Mr. CELLER. And in both instances the bond was $300?

Mr. STALLWORTH. That is correct.

Mr. BYRNE. Is there anything else that you know of that you have not told us regarding these incidents?

Mr. STALLWORTH. Well, there was one matter, it happened on Monday, I think it was.

Mr. BYRNE. Of this week?

Mr. STALLWORTH. Yes, sir; in Shelby County. It was a questionable case. I do not know whether it pertains to this or not.

Mr. BYRNE. What do you mean by that? You say that something happened in Shelby County?

Mr. STALLWORTH. Yes; a man was beaten.

Mr. BYRNE. Have you any personal knowledge of that?

Mr. STALLWORTH. Yes, sir; I have the story; I investigated the incident.

Mr. BYRNE. Let us have the story; let us have what you know.

Mr. STALLWORTH. His name is Howard Lee Johnson. He lives in Shelby County, about 20 miles from Birmingham. We got an anonymous tip—I think this was Monday—that the man had been beaten. We went out to see him. He had a black eye and a bruised cheek and a bandage on his neck, and had a T-shirt with blood on it. He said the Klan or someone representing the Klan had beaten him up.

Mr. BYRNE. Did he tell you the circumstances? Tell us what he said.

Mr. STALLWORTH. He said he was coming out of Homewood, which is just outside of Birmingham, going home, about 11:30.

Mr. BYRNE. At night?

Mr. STALLWORTH. That is correct. He said he was waiting at this filling station for a bus. First, he had gone to see a friend of his whom he had asked to take him home. The friend refused and he had gone down to a filling station to wait for a bus. There he said two men, one of them with a hood on, knocked him down.

Mr. BYRNE. Did he say what they knocked him down with, their hand or an instrument?

Mr. STALLWORTH. With his fist. He said he ran back to the friend's house and they bandaged up his wounds and took him home. I talked to the friend, whose name was Martin, Tom Martin, a Birmingham contractor. He said that the man, that Johnson, had mentioned nothing about a hooded man that night. That is about all I know about it.

Mr. BYRNE. That is practically all you know about that?

Mr. STALLWORTH. Yes, sir.

Mr. BYRNE. Did this man say that he had made any complaint to the officials?

Mr. STALLWORTH. No, sir; he had not reported it to the sheriff.

Mr. CELLER. Did you make any complaint to any officials?

Mr. STALLWORTH. No, sir.

Mr. CELLER. Do you intend to?

Mr. STALLWORTH. No, sir.

Mr. CELLER. Particularly as a result of what happened to you personally?

Mr. STALLWORTH. Oh—in my case?

Mr. CELLER. Yes.

Mr. STALLWORTH. Yes; the men were arrested.

Mr. CELLER. That is what I mean.

Mr. JENNINGS. Did you verify the statement that was made that one of these men that assaulted you down in the store had been the postmaster of the town of Dora? You made that statement?

Mr. STALLWORTH. No, sir; I did not verify that. As far as I know, his wife was postmistress. That was what was told me by the judge in Jasper.

Mr. JENNINGS. Was the post office located in the store where you were assaulted?

Mr. STALLWORTH. No, sir.

Mr. JENNINGS. Is she the postmistress now?

Mr. STALLWORTH. No, sir.

Mr. JENNINGS. She had been?

Mr. STALLWORTH. That is correct.

Mr. JENNINGS. What was this man's name?

Mr. STALLWORTH. Fowler.

Mr. JENNINGS. Is he the first man who assaulted you?

Mr. STALLWORTH. Yes, sir.

Mr. JENNINGS. And the fellow who threw the hammer at you, who was he?

Mr. STALLWORTH. Godfrey. He operated the store.

Mr. JENNINGS. How big a man was Fowler; how much did he weigh, would you say?

Mr. STALLWORTH. About 240.

Mr. JENNINGS. How old a man is he?

Mr. STALLWORTH. About between 35 and 40, I guess.

Mr. JENNINGS. That is Fowler; he was 35 to 40 years of age and weighs 240 pounds?

Mr. STALLWORTH. Approximately.

Mr. JENNINGS. How much did the other fellow weigh, the fellow who threw the hammer at you?

Mr. STALLWORTH. Around 165 or 170.

Mr. JENNINGS. How old a man is he?

Mr. STALLWORTH. He looked to be around 28, 30.

Mr. JENNINGS. How much do you weigh?

Mr. STALLWORTH. 210.

Mr. JENNINGS. Where were you reared?

Mr. STALLWORTH. Thomaston, Ala.

Mr. JENNINGS. You are an Alabaman?
Mr. STALLWORTH. Yes, sir.
Mr. JENNINGS. Did you ever play football on the Alabama team?
Mr. STALLWORTH. Not on the Alabama team. I played in high school.
Mr. BYRNE. By the way, have any threats been made against you that you know of?
Mr. STALLWORTH. No, sir?
Mr. BYRNE. Has anybody said anything about doing something to you?
Mr. STALLWORTH. No, sir.
Mr. BYRNE. Are there any other questions, gentlemen? Mr. Hobbs, do you desire to ask any questions?
Mr. HOBBS. I would like to ask a question. You stated that Dora was in Walker County?
Mr. STALLWORTH. Yes, sir.
Mr. HOBBS. And you say that the place where this beating took place, with this band or strap, was some 4 miles from there?
Mr. STALLWORTH. As far as I can remember, sir.
Mr. HOBBS. All of this is what they told you?
Mr. STALLWORTH. Yes, sir.
Mr. HOBBS. About a week and a half after it happened?
Mr. STALLWORTH. About 3 weeks.
Mr. HOBBS. About 3 weeks after it happened?
Mr. STALLWORTH. Yes, sir.
Mr. HOBBS. Was the place of the alleged beating of these women in Walker County, also?
Mr. STALLWORTH. Yes, sir.
Mr. HOBBS. So nothing to which you have testified took place in Jefferson County?
Mr. STALLWORTH. That is correct.
Mr. HOBBS. I should like to ask you this question, if you please, sir. Do any of these occurrences involve any race relations?
Mr. STALLWORTH. Well, sir, I can only tell you about the one that I investigated myself. That was the only story about a beating that I have been assigned to.
Mr. HOBBS. Do you know anything about anyone beating any colored person?
Mr. STALLWORTH. No, sir. All I know is what I read in the papers. I read nothing about that.
Mr. HOBBS. Do you know anything about a colored person beating anybody?
Mr. STALLWORTH. No, sir.
Mr. HOBBS. So there is nothing here involving colored people versus white, or the reverse, that has come to your knowledge in your investigation of these affairs?
Mr. STALLWORTH. That is correct.
Mr. HOBBS. I would like to ask you this: Is it not a fact——
Mr. STALLWORTH. One moment, sir. The Negro fortune-teller with whom I talked said that the Klan had visited her, but she would not say anything else about it.
Mr. HOBBS. She did not say that anybody had beaten her or offered any violence?

Mr. STALLWORTH. She said they had not beaten her.
Mr. HOBBS. Or suffered her any violence of any kind?
Mr. STALLWORTH. That is right.
Mr. HOBBS. Is it not a fact that the Legislature of Alabama, both the senate and the house, have now passed antimasking bills?
Mr. STALLWORTH. As far as I know. I read it in the paper today.
Mr. HOBBS. That is about as much basis as you have for any of these things, what somebody told you or what you saw in the paper?
Mr. STALLWORTH. That is correct.
Mr. HOBBS. Is it not a fact that the paper also says that the Governor has signed the bill which has now passed both houses and is now the law of Alabama?
Mr. STALLWORTH. Yes, sir.
Mr. HOBBS. And all of the rough stuff as to which you have any knowledge involves white against white?
Mr. STALLWORTH. In my investigation, that is all I found.
Mr. HOBBS. And the only complaint that has been made to peace officers in Alabama was made by you?
Mr. STALLWORTH. So far as I know.
Mr. HOBBS. And was promptly attended to and arrests made and the defendants placed under bond?
Mr. STALLWORTH. That is correct; as far as my investigation goes.
Mr. HOBBS. I would like to ask you this question. Did you come here of your own volition?
Mr. STALLWORTH. No, sir; I did not.
Mr. HOBBS. Did you ask to come?
Mr. STALLWORTH. No, sir.
Mr. HOBBS. How did you get your summons to come?
Mr. STALLWORTH. I received a telegram from Mr. Celler who asked me what was the earliest date I could appear in Washington. I sent him a telegram that I was available on request.
Mr. HOBBS. By Mr. Celler you mean the Honorable Emanuel Celler?
Mr. STALLWORTH. Yes, sir.
Mr. HOBBS. What was the name signed to the telegram, and what was the place from which it originated?
Mr. STALLWORTH. It was signed by Mr. Emanuel Celler, the House Judiciary Committee.
Mr. HOBBS. I beg your pardon, I did not hear that last.
Mr. STALLWORTH. It was signed by Mr. Celler and it was sent from the House Judiciary Committee.
Mr. HOBBS. Did he have anything under his name?
Mr. STALLWORTH. Not that I remember, sir. Do you have a copy of that telegram?
Mr. CELLER. I shall read it. At this juncture I want to state that the subcommittee clerk received information from the Scripps-Howard syndicate office in Washington that Mr. Clarke Stallworth would be available for testimony before this committee, and I sent a wire to Mr. Stallworth under date of June 23, as follows:

CLARKE STALLWORTH,
Birmingham Post, Birmingham, Ala.:

Subcommittee of Judiciary Committee desires your testimony concerning mob violence in the Birmingham area. What is earliest date you can appear in Washington? Committee also desires names of additional witnesses. Reply

desired at earliest opportunity. Of course, investigation must be consistent with Department of Justice policies.

EMANUEL CELLER,
Chairman, House Judiciary Committee.

Mr. Clarke Stallworth, Jr., wired under date of June 23:

Am available upon call, suggest committee counsel compile names of desired witnesses.

CLARKE STALLWORTH, Jr.

Mr. HOBBS. May we have those introduced in evidence?
Mr. CELLER. What is the purpose of that, may I ask?
Mr. HOBBS. I would just like to have the telegrams introduced in evidence.
Mr. CELLER. I have no objection.
Mr. BYRNE. There is no objection.
Mr. HOBBS. May I ask you, Mr. Celler: These words which you did not read following your name, you put on there "Chairman, House Judiciary Committee"?
Mr. CELLER. That is correct.
Mr. HOBBS. Thank you.
(The telegrams introduced in evidence are as follows:)

BIRMINGHAM, ALA., *June 23, 1949.*

Representative EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D. C.:

Am available upon call. Suggest committee counsel compile names of desired witnesses.

CLARKE STALLWORTH, JR.

JUNE 23, 1949.

CLARKE STALLWORTH,
Birmingham Post, Birmingham, Ala.:

Subcommittee of Judiciary Committee desires your testimony concerning mob violence in the Birmingham area. What is earliest date you can appear in Washington? Committee also desires names of additional witnesses. Reply desired at earliest opportunity. Of course, investigation must be consistent with Department of Justice policies.

EMANUEL CELLER,
Chairman, House Judiciary Committee,

Mr. HOBBS. So you did not request that you be summoned or that you be allowed to come and testify before anybody?
Mr. STALLWORTH. No, sir; I did not.
Mr. HOBBS. And you did not know anything at all except that which you have testified to?
Mr. STALLWORTH. Well, there are some trivial facts; the important things I think I have told.
Mr. HOBBS. And that telegram was all that you received?
Mr. STALLWORTH. That is correct.
Mr. HOBBS. And you replied by the telegram that has been put in evidence?
Mr. STALLWORTH. That is correct.
Mr. HOBBS. And that is all that you know about it?
Mr. STALLWORTH. Yes, sir.
Mr. HOBBS. Thank you, sir.
Mr. JENNINGS. Mr. Stallworth, these papers withe which you are connected and under whose direction you made these investigations,

are they waging a war against the Ku Klux Klan and its activities down in Alabama?
Mr. STALLWORTH. I would not know, sir. I was just given the assignment.
Mr. JENNINGS. Do they favor the Klan or are they against the Klan?
Mr. STALLWORTH. There have been editorials in the Birmingham Post opposing the Ku Klux Klan.
Mr. JENNINGS. That paper is published in Birmingham?
Mr. STALLWORTH. That is correct.
Mr. JENNINGS. And they carried editorials against the Ku Klux Klan and its practices?
Mr. STALLWORTH. That is correct.
Mr. CELLER. Do you know anything about the dynamiting of two Negroes' homes?
Mr. STALLWORTH. Just what I saw in the paper, just what I heard. I did not investigate that.
Mr. CELLER. Do you know anything about the dynamiting of or any harm done to the home of Bishop Green of the African Methodist Church?
Mr. STALLWORTH. I took a picture of the house; that is all I know about it.
Mr. CELLER. What did the picture show?
Mr. STALLWORTH. It showed one end of the house blown out.
Mr. CELLER. Where is that?
Mr. STALLWORTH. That is in Birmingham.
Mr. CELLER. In the city of Birmingham?
Mr. STALLWORTH. That is correct.
Mr. CELLER. Did you speak to the owner of the house or the tenant of the house?
Mr. STALLWORTH. No, sir; there was no one there.
Mr. CELLER. Was that the home or the house of Bishop Green of the African Methodist Church?
Mr. STALLWORTH. I could not be certain, sir. I was sent out there to take a picture of it. I took the picture and came back to the office. That is all I know about it.
Mr. CELLER. Just explain what you mean by the house being blown up.
Mr. STALLWORTH. The house, with one end of it blown out.
Mr. CELLER. Did you examine the portion which was blown up?
Mr. STALLWORTH. No, sir; I took the picture and left.
Mr. BYRNE. Was it the rear of the house or the front of the house?
Mr. STALLWORTH. One side of the house.
Mr. BYRNE. As you faced it, the right or the left side?
Mr. STALLWORTH. As you face it, on the right side.
Mr. BYRNE. How large a part of the house was demolished or blown down?
Mr. STALLWORTH. About one-third of it was blown out.
Mr. BYRNE. Can you give us any idea by looking around this room and measuring with your eye how large a part, in your opinion, was demolished; from here, or from where you are, to what point, would you say?
Mr. STALLWORTH. About to the wall, something like that.
Mr. BYRNE. From where you are sitting, to the wall?

Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Was it a frame house?
Mr. STALLWORTH. Yes, sir; a wooden frame house.
Mr. BYRNE. Was it one or two or three stories?
Mr. STALLWORTH. A one-story house.
Mr. BYRNE. No basement to it?
Mr. STALLWORTH. I did not look, sir.
Mr. BYRNE. Just a one-story house; is that correct?
Mr. STALLWORTH. That is correct.
Mr. BYRNE. Was it in a section that was quite thickly populated?
Mr. STALLWORTH. No, sir; it was not too thickly populated.
Mr. BYRNE. A sort of suburban part of the town, is that right?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Was it out in the suburbs?
Mr. STALLWORTH. No; it was in the city.
Mr. BYRNE. In the city itself?
Mr. STALLWORTH. Yes, sir.
Mr. BYRNE. Have you discussed this matter with any officials, any police officers, or any police chief, or anybody in the city?
Mr. STALLWORTH. No, sir; someone else handled the story. I just got the picture.
Mr. BYRNE. When did this happen? Was it prior to the time of the happenings with these women that you have spoken of or was it after that?
Mr. STALLWORTH. It was some couple or 3 months before.
Mr. BYRNE. It was prior to what you have already testified to?
Mr. STALLWORTH. That is correct.
Mr. KEATING. Mr. Stallworth, this committee has before it for consideration H. R. 4682, a bill to provide means of further securing and protecting civil rights, and also a series of bills to provide protection to persons from lynching. The purpose of this hearing, as I understand it, is to assist us in the determination of whether (*a*) there is a need for some such legislation and (*b*) if so, how it should be drawn. Have you seen the provisions of H. R. 4682?
Mr. STALLWORTH. I have not read it thoroughly; I saw it.
Mr. KEATING. You have seen it?
Mr. STALLWORTH. Yes, sir.
Mr. KEATING. And the provisions of the various antilynching bills, have you seen those?
Mr. STALLWORTH. We talked them over with Mr. Foley yesterday afternoon.
Mr. KEATING. Do you have any constructive suggestions to offer to this committee in the light of the experiences which you have detailed as to either the question whether there is a need for some such legislation or, if so, what its terms should be?
Mr. STALLWORTH. No; I do not.
Mr. KEATING. That is all, Mr. Chairman.
Mr. LANE. Mr. Stallworth, I was out of the room for a few minutes to answer a quorum call and I should like to ask you a few questions, if you do not mind. Have you been living in Alabama right along prior to these happenings that you mentioned here in the committee?
Mr. STALLWORTH. I have been living in Alabama until I was 18 and then I lived in Birmingham since September.

Mr. LANE. You say that you were first assigned to investigate this case by——
Mr. STALLWORTH. By the city editor.
Mr. LANE. And that was how long after the incident had occurred?
Mr. STALLWORTH. Approximately 3 weeks.
Mr. LANE. And that is the incident concerning these women and this man Morrison, is that right?
Mr. STALLWORTH. Yes, sir; and two other men.
Mr. LANE. Is there any connection between the women and the other men, as far as you know from your investigation?
Mr. STALLWORTH. Just that the girl told me that the three women had been dating the three men.
Mr. LANE. When you say the three men, those are the three men who were abused?
Mr. STALLWORTH. That is correct.
Mr. LANE. When you were first assigned to investigate the assault on these women and these men, that was 3 weeks after the event took place?
Mr. STALLWORTH. It happened on June 3. I was assigned to the story on June 20.
Mr. LANE. Do you know whether or not somebody had been arrested in the interim?
Mr. STALLWORTH. Arrested?
Mr. LANE. Yes; had there been any arrests made up to the time that you started to check up this case for your newspaper?
Mr. STALLWORTH. Not in the Burton case.
Mr. LANE. There had not been any arrests?
Mr. STALLWORTH. No, sir.
Mr. LANE. Do you know whether or not it was being investigated by the local police or the State police?
Mr. STALLWORTH. Well, as I understand it, the sheriff of Walker County said that he had been investigating it.
Mr. LANE. Since the time it happened?
Mr. STALLWORTH. I do not know about that; since the time he heard about it.
Mr. LANE. Do you know when he heard about it, after it took place?
Mr. STALLWORTH. No, sir; I do not.
Mr. LANE. Have you got any idea about that?
Mr. STALLWORTH. That is only third-hand information. I had that from someone else. I did not talk to the sheriff.
Mr. LANE. In any event, it was 3 weeks after this took place that you started to check up on this case for your paper?
Mr. STALLWORTH. That is correct.
Mr. LANE. Had there been some publicity in the papers about it?
Mr. STALLWORTH. No, sir.
Mr. LANE. Had there been any newspaper reports, as far as you know?
Mr. STALLWORTH. There had been one in the morning paper. We had an afternoon paper. There had been a report in the morning paper.
Mr. LANE. How long after it took place was the report in the morning paper?

Mr. STALLWORTH. It happened on June 3. The morning paper of June 20, the Birmingham Age-Herald carried the story.

Mr. LANE. So the public knew about it the following morning?

Mr. STALLWORTH. After it happened?

Mr. LANE. Yes.

Mr. STALLWORTH. No, sir. It happened on June 3, and the morning paper of June 20 carried the story.

Mr. LANE. Was that the first time it came out in the paper that you know of?

Mr. STALLWORTH. That is correct.

Mr. LANE. When you talked with these women, were there any officers present or just yourself?

Mr. STALLWORTH. There were no officers present; just myself.

Mr. LANE. Did you talk with the women in the presence of the men?

Mr. STALLWORTH. No, sir.

Mr. LANE. When you were trying to check up on this story?

Mr. STALLWORTH. No, sir.

Mr. LANE. Did they tell you whether or not they were treated by doctors or physicians?

Mr. STALLWORTH. No, sir.

Mr. LANE. Did they go to a hospital?

Mr. STALLWORTH. Not that I know of.

Mr. LANE. You said that you did not observe any marks on them?

Mr. STALLWORTH. No, sir. They mentioned nothing about going to a doctor.

Mr. LANE. Did you ask them whether or not they had complained to the police department about it?

Mr. STALLWORTH. Yes, sir.

Mr. LANE. What did they say to that?

Mr. STALLWORTH. They said they had not.

Mr. LANE. They had not complained to the police department?

Mr. STALLWORTH. That is correct.

Mr. LANE. And that was 3 weeks after it took place?

Mr. STALLWORTH. That is correct.

Mr. LANE. Do you know of any reason why they did not complain to the police department? Did they tell you?

Mr. STALLWORTH. As I said before, sir, Mr. Morrison, one of the men, said that he had not complained because it would do no good.

Mr. LANE. And you say he is a white man?

Mr. STALLWORTH. Yes, sir.

Mr. LANE. Do you know whether or not Mr. Morrison is a married man?

Mr. STALLWORTH. Yes, sir.

Mr. LANE. And lives with his family?

Mr. STALLWORTH. He was at his own house with his son. I talked to him and his son on the front porch of his house.

Mr. LANE. Were the other two men married?

Mr. STALLWORTH. One of them was married and one divorced.

Mr. LANE. Were the women married?

Mr. STALLWORTH. The mother was a widow and the two girls were not married.

Mr. LANE. Did you make any inquiry of the police department to find out if they had done anything about investigating this matter?

Mr. STALLWORTH. That is where I was going. I went to see the deputy at the time that I was told to go to the store to get some information. That is what I was trying to do.

Mr. LANE. You were going to the sheriff's office?

Mr. STALLWORTH. I went to the deputy in Sumiton.

Mr. LANE. The deputy sheriff?

Mr. STALLWORTH. That is correct.

Mr. LANE. And you were on your way when you were beaten?

Mr. STALLWORTH. I got to his house; he was not at home. That is when I was told to go down to a store in Sumiton to get some information.

Mr. LANE. And that is when they attacked you?

Mr. STALLWORTH. Yes, sir.

Mr. LANE. How many people attacked you?

Mr. STALLWORTH. Two.

Mr. LANE. I hate to go over this again, but I missed it. How many times did they hit you?

Mr. STALLWORTH. I do not know, sir. We wrestled around maybe 30 seconds.

Mr. LANE. These two men jumped on you?

Mr. STALLWORTH. Yes, sir.

Mr. LANE. Have any charges been filed against these two men who assaulted you?

Mr. STALLWORTH. Yes, sir. They have been arrested on an assault charge and assault with a weapon. They were arrested and are out on $300 bond each.

Mr. LANE. In what kind of court is the charge pending?

Mr. STALLWORTH. I think it is a county court.

Mr. LANE. Has there been a grand-jury indictment or did you swear out an affidavit?

Mr. STALLWORTH. I just swore out a warrant.

Mr. LANE. You swore out an affidavit and they issued a warrant?

Mr. STALLWORTH. Yes, sir.

Mr. LANE. Do you know if the grand jury is going to check into it?

Mr. STALLWORTH. I do not know if they are or not.

Mr. LANE. You have never been called before the grand jury?

Mr. STALLWORTH. No, sir.

Mr. LANE. From all that you found, this group with the hoods on were trying to take it on themselves to enforce the law?

Mr. STALLWORTH. All I can tell you is the fact, just what those women told me.

Mr. LANE. That is all.

Mr. FRAZIER. I am sorry; I was away during the early part of your testimony. But when you went to see this deputy sheriff at his place at the store——

Mr. STALLWORTH. No, sir; that was not the deputy sheriff.

Mr. FRAZIER. I understood you just now to say that you were going there to see the deputy sheriff.

Mr. STALLWORTH. I went to his home.

Mr. FRAZIER. And then you went to the store?

Mr. STALLWORTH. Yes, sir.

Mr. FRAZIER. It was not the deputy sheriff's store?

Mr. STALLWORTH. No, sir.

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Mr. FRAZIER. What transpired when these men attacked you, when you got down there? Please be brief, because I understand that you have already testified concerning this.

Mr. STALLWORTH. I went into the store and asked a man if he had the information that Mrs. Hoaglund had told me about. He said, "What are you looking for?" I told him I was looking for any evidence of beatings either by hooded men or Klansmen. He said, "Call me a Klan, will you, you SOB?" and he hit me in the face.

Mr. FRAZIER. He said you called him a Klansman—what was that?

Mr. STALLWORTH. No, sir. He said, "Call me a Klan, will you, you SOB?" and he hit me in the face. Then I wrestled with him.

Mr. KEATING. In this case he used the initials, did he?

Mr. STALLWORTH. No, sir; he said "son-of-a-bitch."

Mr. KEATING. They speak freely down in Alabama.

Mr. STALLWORTH. He did not use the initials.

Mr. KEATING. Some newspaper men have had different experiences from that.

Mr. FRAZIER. You had not called him a Klansman, had you, at that time?

Mr. STALLWORTH. No, sir.

Mr. FRAZIER. But he accused you of calling him a Klansman?

Mr. STALLWORTH. That is correct. I just told him I was looking for evidence of beatings. He asked me what I was looking for and I told him that I was looking for evidence of beatings by hooded men or Klansmen.

Mr. DENTON. I did not hear all of your story, Mr. Stallworth. What did he say to you?

Mr. STALLWORTH. "Call me a Klan, will you, you son-of-a-bitch?"

Mr. FRAZIER. The State of Alabama has now enacted a law making it unlawful to go about with one of these robes or hoods over their heads, have they not?

Mr. STALLWORTH. That is right.

Mr. FRAZIER. That was enacted by the legislature yesterday or the day before.

Mr. LANE. The State of Alabama also has a law on the books that it is a crime to assault and beat anybody, have they not?

Mr. STALLWORTH. That is correct.

Mr. BYRNE. For the record at this point I want to clear up the situation regarding the wire which you received from Mr. Celler. Prior to your receipt of that wire, I was in Mr. Celler's office in the Judiciary Committee rooms, with three men from the Department of Justice. We had a conference with them and discussed the matter of your trouble down there. Then it was stated by them that the best thing to do would be to wire you and find out from you if you could come here. Having been informed that this subcommittee would be asked to investigate this particular matter I, as chairman of the subcommittee, said that it was agreeable to me that the wire be sent to you. So that wire was sent. I did not know its contents, but I presumed that Mr. Celler gave instructions to Mr. Foley, the counsel of our particular subcommittee, to send the wire. I think that may straighten out that situation as to the origin of the wire.

Mr. FRAZIER. You are here, then, at the request of the chairman, through this telegram?

Mr. STALLWORTH. That is correct.

Mr. FRAZIER. Will you tell me the name of this little town where these women lived?

Mr. STALLWORTH. They lived in Dora.

Mr. FRAZIER. Had there been any other trouble there before that time?

Mr. STALLWORTH. In Dora?

Mr. FRAZIER. Yes; of a similar nature.

Mr. STALLWORTH. Not that I know of.

Mr. FRAZIER. This is the first you had heard of it?

Mr. STALLWORTH. That is correct.

Mr. LANE. The assault upon the women and Morrison—did that take place during the night?

Mr. STALLWORTH. Yes, sir.

Mr. LANE. You said it took place on the outskirts of the town?

Mr. STALLWORTH. Some 4 miles, as I remember it, from their telling me, from their house, in the woods.

Mr. LANE. And you say that one of the women told you there were about 150 persons there?

Mr. STALLWORTH. That is correct.

Mr. LANE. And she told you that they wore hoods?

Mr. STALLWORTH. Yes, sir.

Mr. LANE. With the insignia of the Ku Klux Klan?

Mr. STALLWORTH. Yes, sir.

Mr. LANE. Is that where you got the information?

Mr. STALLWORTH. Yes, sir.

Mr. LANE. From the women?

Mr. STALLWORTH. Yes, sir.

Mr. LANE. Which one of the women told you that?

Mr. STALLWORTH. Billie Fay.

Mr. LANE. Did the men tell you anything of the same nature?

Mr. STALLWORTH. Yes; only Morrison. I do not remember if he identified them as Klansmen or not. He said they were hooded.

Mr. BYRNE. Did they have letters on their hoods or their dress, or whatever it was?

Mr. STALLWORTH. I have never seen it, sir.

Mr. BYRNE. Did they have anything on it like KKK, anything of that kind?

Mr. STALLWORTH. I have never seen it.

Mr. KEATING. You have never seen a Klansman in uniform?

Mr. STALLWORTH. No, sir.

Mr. LANE. After they were beaten, were they brought back or left there?

Mr. STALLWORTH. They were brought back.

Mr. LANE. How did they go to that place; by automobile?

Mr. STALLWORTH. By automobile.

Mr. KEATING. If there were 150 persons, I assume there were many automobiles. Did the men say there were 150 people there?

Mr. STALLWORTH. He estimated 150.

Mr. DENTON. Did they attempt to have any kind of trial out there when they called them out, or did they just start beating them?

Mr. STALLWORTH. They mentioned nothing about a trial.

Mr. DENTON. Did they say why they were beating them other than the fact that they were having dates? Did the men say anything more?

Mr. STALLWORTH. They asked about their personal affairs with the men.

Mr. DENTON. Just what did they ask them about their personal affairs? Will you try to be more specific?

Mr. STALLWORTH. The 18-year-old daughter said that one of the Klansmen asked her if she had ever slept with the man named Koogler, who was one of the other men involved.

Mr. KEATING. Was Koogler there at that time?

Mr. STALLWORTH. At the interview?

Mr. KEATING. Was he beaten up?

Mr. STALLWORTH. Yes, sir; Willie Koogler, Bill Lowry, and Troy Morrison were the three men.

Mr. KEATING. Were they beaten up at the same time the women were?

Mr. STALLWORTH. Koogler was not beaten.

Mr. BYRNE. Two of the men were beaten?

Mr. STALLWORTH. That is correct.

Mr. BYRNE. Morrison and Lowry?

Mr. STALLWORTH. They were beaten. Koogler was not beaten.

Mr. BYRNE. You testified to that before.

Mr. STALLWORTH. Yes, sir

Mr. LANE. Has anybody been arrested as a result of that beating?

Mr. STALLWORTH. Not that I know of.

Mr. LANE. It is still under investigation?

Mr. STALLWORTH. I guess so, sir.

Mr. FRAZIER. No complaint was ever made by any of the parties?

Mr. STALLWORTH. I do not know whether they have complained or not. They had not complained at the time that I asked them.

Mr. LANE. If no complaint was made I do not suppose there would be any investigation.

Mr. BYRNE. Are there any other questions, gentlemen?

Mr. JENNINGS. Just a question with relation to this bishop's house that was dynamited, and which you photographed. Have you a photograph of that house?

Mr. STALLWORTH. I have not got it with me. It was printed on the front page of the Birmingham Post.

Mr. JENNINGS. About how many rooms were in that house?

Mr. STALLWORTH. I would not know, sir. I would say about six.

Mr. JENNINGS. Was it a house that was being occupied at the time you took the picture?

Mr. STALLWORTH. I do not think it was occupied.

Mr. JENNINGS. Had they moved out after the dynamiting?

Mr. STALLWORTH. I do not think they had moved into the house.

Mr. JENNINGS. Was it a new house?

Mr. STALLWORTH. No, sir; it was not new.

Mr. JENNINGS. A bishop of the church lived there? Is there a bishop of that church living there?

Mr. STALLWORTH. I have not met the bishop of that church.

Mr. JENNINGS. Is there such a man there in Birmingham, Ala.?

Mr. STALLWORTH. I would not know, sir; I have never seen him.

Mr. JENNINGS. Is he reputed to live there?

Mr. STALLWORTH. He is reputed to live there.

Mr. JENNINGS. And you understood he was a resident of Birmingham, Ala., at that time?

Mr. STALLWORTH. That is what I read.

Mr. JENNINGS. And was a bishop in the African Methodist Church.

Mr. STALLWORTH. That is correct.

Mr. JENNINGS. The reason I am interested is that I am a member of the Methodist Church and I do not like to hear about bishops being treated that way.

Mr. DENTON. I would like to ask one question. How large a town is the town of Dora?

Mr. STALLWORTH. Where the women were?

Mr. DENTON. Yes.

Mr. STALLWORTH. It is a very small town, just one street of stores and a railroad running by it.

Mr. DENTON. And is this deputy sheriff located there?

Mr. STALLWORTH. I went to see the deputy sheriff in Sumiton.

Mr. DENTON. In a town of that size, is it possible for 150 men to dress up in robes and take people away without everybody in the town knowing about it, without its being a matter of general knowledge?

Mr. STALLWORTH. I would not know about it. It is just a small town.

Mr. BYRNE. Would you say the population is 500?

Mr. STALLWORTH. I would not say it was 500.

Mr. BYRNE. Would you say it was 300?

Mr. STALLWORTH. Something like that.

Mr. BYRNE. That would be a fair estimate on your part, based upon the number of houses or cottages in the place?

Mr. STALLWORTH. That is right.

Mr. DENTON. Do the sheriffs patrol the country around there?

Mr. STALLWORTH. There is a deputy in Dora. I think his name is Robinson.

Mr. DENTON. Is it conceivable for 150 people, hooded people, to come into that house, without the sheriff knowing about it?

Mr. STALLWORTH. I would not know, sir. All I can tell you is the facts that I know.

Mr. KEATING. Did these women indicate whether or not these 150 men were from Dora or from the surrounding area?

Mr. STALLWORTH. They did not indicate that to me.

Mr. JENNINGS. There probably would not be that many men in Dora, if it is as small a town as you say. They must have come from around that entire region.

Mr. LANE. The only ones who have been arrested are the persons who assaulted you, as far as you know of anything that has taken place in Alabama?

Mr. STALLWORTH. Well, sir, they are the only two that I know of who have been arrested for beatings.

Mr. LANE. Those two were arrested on your complaint, is that right?

Mr. STALLWORTH. That is correct.

Mr. LANE. And nobody has been arrested in the other case, because no complaint has been made; are we to understand that?

Mr. STALLWORTH. Nobody has been arrested because no complaint has been made?

Mr. LANE. Yes.

Mr. STALLWORTH. Are you speaking of all cases in general or the Burton case in particular?

Mr. LANE. That particular case that you referred to involving women and the men.

Mr. STALLWORTH. They had not made a complaint on June 20. I do not know whether they have made a complaint up to this time or not. So far as I know, there have been no arrests in that case.

Mr. LANE. Thank you.

Mr. BYRNE. If there are no further questions, thank you very much. The next witness is Mr. Clancy E. Lake.

STATEMENT OF CLANCY E. LAKE, BIRMINGHAM, ALA.

Mr. Lake, your name is Clancy E. Lake?

Mr. LAKE. That is correct.

Mr. BYRNE. And you reside where?

Mr. LAKE. Birmingham, Ala.

Mr. BYRNE. What is your street address there?

Mr. LAKE. No. 2020 Fourteenth Avenue North.

Mr. BYRNE. What is your occupation?

Mr. LAKE. I am a city hall reporter for the Birmingham News.

Mr. BYRNE. And that is a Scripps-Howard paper, is it?

Mr. LAKE. No, sir.

Mr. BYRNE. Pardon me for my ignorance.

Mr. LAKE. It is a home-owned newspaper.

Mr. BYRNE. Is it a morning or afternoon paper?

Mr. LAKE. Afternoon paper.

Mr. BYRNE. How long have you worked on this particular paper?

Mr. LAKE. Since last October 27.

Mr. BYRNE. Did you have prior experience as a newspaper man?

Mr. LAKE. Yes, sir; for 2½ years in Sarasota, Fla.

Mr. BYRNE. Will you tell us something of your schooling and background?

Mr. LAKE. Just high school.

Mr. BYRNE. What high school?

Mr. LAKE. Tottenville High School, in New York City.

Mr. BYRNE. How long have you resided in Birmingham?

Mr. LAKE. Since last October 27.

Mr. BYRNE. When you went to work for this paper?

Mr. LAKE. Yes, sir.

Mr. BYRNE. You have some information or knowledge regarding a situation that has already been under discussion here this morning in that locality?

Mr. LAKE. The Dora incident?

Mr. BYRNE. Yes, sir; do you know something about that?

Mr. LAKE. Yes, sir.

Mr. BYRNE. Will you tell us in your own language, or do you want us to interrogate you?

Mr. LAKE. If you do not mind, I think I could save time by just telling the story.

Mr. BYRNE. That is a relief to us, also; please do.

Mr. LAKE. Saturday, 2 weeks ago, I had a tip that two men had been beaten in Dora. I went to Dora.

Mr. BYRNE. By a tip you mean information?

Mr. LAKE. Yes, sir.

Mr. BYRNE. And that came from where?

Mr. LAKE. I cannot tell you that, sir. I got hold of a photographer and we went to Dora, which is a small mining hamlet. The population is listed as about 1,000.

Mr. BYRNE. About 1,000?

Mr. LAKE. Yes, sir. The photographer and I moseyed around; we did not want to ask too many questions and as a result we got nothing. I went back Saturday afternoon. I got hold of my contact again and he told me to look up a man named L. M. Beard, who lived in a place called Palos. There is no community there, it is just a section, in the northwest section of Jefferson County.

I went to see Mr. Beard and his was the only name I had. He told me that on the night of June 3, while he was traveling through Dora in a truck, he noticed a group of cars on the side of the Dora road, and other cars parked on the side of the road. As he went past the line of cars he said the lead car swung out in front of him, blocking his way. Two hooded men jumped up to the side of his truck and snatched him out of the truck. He said they were armed with pistols and rifles. He look around and saw between 100 and 150 heavily armed men all wearing hoods.

He said they hauled him into the woods a short way, put a pistol to his head and broke out a letter and shined a flashlight on it and made him read it. He said the letter was written in three different styles of handwriting, and accused him of nonsupport of his family, gambling, bootlegging, and so forth. He said they warned him it had better stop or they would be back again. Then they turned him loose. There was no violence attached to that paritcular case.

Mr. KEATING. No violence except holding a pistol to his head?

Mr. LAKE. What I mean is, he was not whipped or beaten; I mean physical violence.

Mr. KEATING. He was not injured, except for his nervous system.

Mr. LAKE. Yes, sir. I asked Mr. Beard if he had heard of any other incidents. He was a railroadman and I thought perhaps that was one of the men I had been informed had been beaten. He told me about Troy Morrison. I went to Troy Morrison's home and he did not want to talk about it. I tried to sell him a bill of goods, that these things had to be made public, or else we could not do anything about it. He still did not want to talk about it. He said, "You know, there is another fellow involved; his name is Bill Lowry."

"Well," I said, "let us go see him." So, with Troy Morrison I went to where Bill Lowry works. Troy Morrison lived in Dora and so does Bill Lowry. We went over to see Bill Lowry. Bill did not want to talk about it, either. I kept up my sales talk about the fact that we have got to break this, we have got to make this story public and at that point I found out there were three women involved.

Mr. KEATING. One of these men told you that?

Mr. LAKE. Yes, sir; they told me there was one woman involved and that her name was Mrs. Irene Burton. She was a 38-year-old widow with five children. With Troy Morrison I went to Mrs. Burton's home and there I found out her two daughters were involved, Sally, 16 years old and Billie Fay, 18, and also another man named Willie Koogler. He is 39. He lives in Cordova, Ala.

Well, I got Mrs. Burton and Troy Morrison and Sally Burton together and the story they told me—I talked with five of the seven persons who were involved that night—and this is the story they told

me: That at about 11 o'clock Mrs. Burton, her two daughters, Willie Koogler, Troy Morrison and Bill Lowry were sitting in Mrs. Burton's home in Dora. It was some time about 11 o'clock. There was a knock at the door. I do not recall which one answered the knock. But there were hooded men at the door. Someone had lit two railroad fusees in the front yard. Those hooded men came in. They were carrying rifles.

Mr. JENNINGS. A fusee is something that burns at the end of a pointed piece of iron, which railroadmen stick in a cross-tie when they want to flag down a train, is that right?

Mr. LAKE. Yes, sir; that is right.

Mr. BYRNE. And throws a red glare?

Mr. LAKE. Yes, sir. The men came in. Four of them were assigned to Billy Lowry. He is a 186-pound fellow and is pretty rugged. Four of them hustled him out of the front door. They blindfolded him.

Two other persons, hooded persons, were assigned to each of the other persons in the house, Troy Morrison and Billy Lowry being the only ones who were blindfolded.

Mrs. Burton told me that when she went out, she noticed that the house was surrounded. They were taken out of the house. There is a small dirt road that runs in front of the house. They were taken along that road to a corner and near the railroad trestle and there was a line of cars parked on a small dirt road which led up into the woods.

Mr. KEATING. Just one of them was blindfolded?

Mr. LAKE. Two men were blindfolded. Sally Burton told me that she counted the cars. She was put in the second car and she counted 23 cars by the time she got into it. She and her mother were put in one car. She said the men kept making filthy remarks to her.

Mr. JENNINGS. They did what?

Mr. LAKE. They kept making filthy remarks to her.

Mr. JENNINGS. Insulting remarks?

Mr. LAKE. Yes, sir.

Mr. KEATING. That is, these hooded men?

Mr. LANE. Yes, sir. They drove on up this dirt road. It is a very narrow dirt road; it is winding, with trees hanging over it, and is just wide enough for one car.

Mr. JENNINGS. Did you go over that road over which they transported these people?

Mr. LAKE. Yes, sir. When they got about 3½ to 4 miles from their home on that dirt road they stopped at a small clearing where the road forked to the right and to the left and another dirt road continued almost straight ahead in a slight offset to the right.

They took Mrs. Burton, Sally Burton, and Billie Fay Burton out of the car at that point, and took them about 25 yards down the road. They then brought Troy Morrison out of the car. They put a noose around his neck and towed him along to where the woman was standing, threw one end of the line over the tree, and pulled them up to tiptoe.

Mr. BYRNE. That is, they pulled the man with the rope around his neck up to his tiptoes?

Mr. LAKE. Yes, sir.

Mr. JENNINGS. That was a 260-pound man?

Mr. LAKE. No, sir; Troy Morrison, I imagine, weighs about 160 or 170 pounds.

Mr. JENNINGS. Who was the man you said weighed 260 pounds?

Mr. LAKE. That was Mr. Fowler in the other incident, I believe.

Mr. KEATING. When they got Morrison on tiptoe, did he say that they said anything to him or told him why he was put in that uncomfortable position?

Mr. LAKE. No, sir; not at that point. Troy Morrison told me that they did not say much of anything to him, and he did not say much to them.

Mr. KEATING. You mean that these victims did not remonstrate in any way?

Mr. LAKE. Just Mrs. Burton, from what I have been told. They said, from what they told me, "Well, we won't hang them; we will just whip them." They made them get down in the manner that Mr. Stallworth has described, and they lashed them five times.

Mr. BYRNE. With what, did he say?

Mr. LAKE. I believe it was a leather belt about 5 or 6 feet long. He also mentioned that it might have been a miner's belt, but I did not know.

Mr. JENNINGS. Did he say whether it was such a belt, of such leather as would be used in a mining belt, that had some thickness and weight to it?

Mr. LAKE. Well, he said it was a heavy belt that was used on him. But the talk about it being a mining belt was very vague.

Mr. JENNINGS. Have you seen such leather as is used for belting around machinery?

Mr. LAKE. Yes, sir; that is more or less what they thought it might have been, which is heavy material.

Mr. JENNINGS. Heavier than the backband or bellyband that they would use on a mule or in horse harness? Were you raised on a farm?

Mr. LAKE. No, sir; I am a city boy.

Mr. JENNINGS. The reason I am using farm language is that I have been around a farm and I known how they put these backbands and bellybands on a horse or a mule. And I know about these belts that are used to operate machinery. They said that it was heavy leather?

Mr. LAKE. Yes, sir. Now, I may get this a little out of chronological order, but I believe the next order of business was a prayer. They held quite a long prayer for Billy Lowry. I was wrong before; Billy Lowry did fight with them. He had fought with them on the way out in the car.

Mr. JENNINGS. One of the hooded fellows prayed?

Mr. LAKE. Yes, sir.

Mr. JENNINGS. Was he praying to the Lord or to the Devil?

Mr. LAKE. He was just praying.

Mr. JENNINGS. Just praying.

Mr. LAKE. He led them all in prayer for Billy Lowry and then they brought Billy with a noose around his neck, and Mrs. Burton and Troy Morrison told me that when they brought Billy out of the car, they yanked on the rope and pulled him to his knees; and then they brought him about 20 yards out to this point where the rest were, and threw the rope over the tree and threatened to hang him. They

hauled him up to tiptoe and then they said, "Well, we will just lash him," and they lashed him six times. He told me that he was cut very severely; that the blood was flowing down his legs even when he got home.

Mr. BYRNE. Did he say that more than one man lashed him, or just one?

Mr. LAKE. Just one man lashed him. I believe that at that point they had another prayer for all six of the persons who were out there.

Mr. KEATING. What kind of a prayer? Did they tell you what they said at the prayer?

Mr. LAKE. I would imagine it was a church-meeting prayer. That is what they indicated.

Mr. KEATING. They were praying for——

Mr. LAKE. For the salvation of these persons' souls.

Mr. KEATING. For their souls, so that they would be better people in the future?

Mr. LAKE. Better citizens; yes, sir.

Mr. KEATING. Better citizens?

Mr. LAKE. Yes, sir. Then they took Mrs. Burton and they made her bend over a man—they had a man down on the ground—and made her bend over him and they hit her three licks with this belt.

Mr. JENNINGS. That was the mother of these girls?

Mr. LAKE. That is correct. And they accused her of running an indecent place. That is what she told me.

Mr. KEATING. They did make that accusation at that time?

Mr. LAKE. She told me that is what they accused her of and she denied it to them at the time. Next in order, they brought Willie Koogler out. Willie Koogler is a cripple; one of his legs, I believe, is shorter than the other. This is what the others told me. Willie told them he was a cripple and could not bend and they said, "That is all right; get on the ground and we will kick your head in."

Mr. JENNINGS. What did they say?

Mr. LAKE. "Get on the ground and we will kick your head in." But they did not actually carry any of that out. They put a noose around his neck three different times.

Mr. JENNINGS. To what extent is he crippled?

Mr. LAKE. One leg is shorter than the other I believe as the result of a mining accident.

Mr. KEATING. How old is he?

Mr. LAKE. I believe Willie is about 38 or 39.

Mr. JENNINGS. How much would he weigh?

Mr. LAKE. Not very much. I did not talk to Willie.

Mr. JENNINGS. He is a small man?

Mr. LAKE. Yes, sir.

Mr. JENNINGS. When they forced this mother to bend across some other man, was that one of the victims or was that one of the mob?

Mr. LAKE. One of their men.

Mr. JENNINGS. One of their men?

Mr. LAKE. Yes, sir.

Mr. JENNINGS. She was forced to lie down across one of their men who was in a stooping or recumbent position on the ground?

Mr. LAKE. Yes, sir.

Mr. JENNINGS. And then they lashed her with this belt?

Mr. LAKE. Yes, sir.

Mr. JENNINGS. They did not bother Sally Burton, used no physical violence on Sally Burton?

Mr. LAKE. They used no physical violence, except they put a noose around her neck and left it on for 2 or 3 minutes.

Mr. BYRNE. I believe the other witness said her name was Fay?

Mr. LAKE. That is another sister, Billie Fay, who was also there. That is the 18-year-old girl who was engaged to Willie Koogler.

Mr. JENNINGS. You say she was engaged to be married?

Mr. LAKE. To Willie Koogler. That is what Sally Burton told me.

Mr. FRAZIER. She was not interfered with in any way?

Mr. LAKE. No, sir; she was not.

Mr. KEATING. The 16-year-old girl was not beaten?

Mr. LAKE. She told me she was not beaten. I went out the next night, to the scene with her, on a Sunday night, with her and her mother, and Sally told me again that she was not beaten, but that they put the noose around her neck.

Mr. BYRNE. The mother was beaten?

Mr. LAKE. Yes, sir.

Mr. BYRNE. And the 18-year-old girl was beaten?

Mr. LAKE. The 18-year-old girl was not molested in any way.

Mr. BYRNE. And the 16-year-old girl?

Mr. LAKE. They put a noose around her neck and forced her to watch her mother beaten.

Mr. JENNINGS. How much would that 16-year-old girl have weighed?

Mr. LAKE. I do not know.

Mr. JENNINGS. Approximately; was she large or small?

Mr. LAKE. She was of slender build.

Mr. BYRNE. Maybe 110 or 115 pounds would be a fair guess?

Mr. LAKE. Yes, sir; I imagine so. They closed the ceremony with another prayer and put the persons back in the cars and took them to their homes. They told Mrs. Burton she would have to leave. Mrs. Burton told me that she had already made arrangements to move out and she did move out of Dora the next day, moved to Sumiton, Ala.

Mr. KEATING. How far away it that?

Mr. LAKE. About 5 miles, I believe, would be a good guess.

Mr. BYRNE. Is that substantially everything?

Mr. LAKE. Yes, sir; that is the story they told me.

Mr. BYRNE. We are very thankful, Mr. Lake.

Mr. LANE. Were there any police officers in that town?

Mr. LAKE. There is a deputy named J. P. Richardson.

Mr. LANE. Did you go to see him?

Mr. LAKE. No, sir; I called him on the phone.

Mr. LANE. Did you get any information from him in reference to this alleged assault?

Mr. LAKE. He told me that he had heard of it in a round-about manner and he took it for granted that the sheriff's office was investigating, the Walker County sheriff's office was investigating.

Mr. LANE. Did you take it up with the sheriff's office?

Mr. LAKE. Yes, sir; the sheriff was busy at the time. He is facing impeachment proceedings. I took it up with his chief deputy who told me it was his understanding that it was just a mild beating. He said nor formal complaint had been made and no formal investigation was being carried out. Since that time Sheriff Baggett has said that a

thorough investigation has been made. Possibly Mr. Trawick can tell you more about that.

Mr. LANE. At the beginning of your testimony you told us about this fellow on the truck, who was stopped on the highway by these hooded men and taken into the woods. Did that many have any connection with these other people, these other six persons you have referred to?

Mr. LAKE. He said not.

Mr. LANE. Did you find out from your talks with anybody whether or not there was any relationship between that particular person and these other six that you have told us about?

Mr. LAKE. Yes, sir; I found a relationship, but——

Mr. LANE. Well, what is it?

Mr. LAKE. I would like to say this at this time, so that we can understand each other much better. Two officers have been working on this thing from the first day. They have worked for 2 weeks without sleep. They have not averaged 2 hours' sleep a day. They are ready to go before a grand jury. They may have gone in this morning and, if not, they will go in tomorrow or the next day.

This incident occurred in Walker County. The Jefferson County grand jury are standing by ready to be called at any minute.

I mentioned this to Mr. Foley yesterday, that there are a lot of things that it would do harm to bring out at this hearing, before the grand jury return indictments. And I can guarantee that there will be a batch of indictments out within the next few days on these incidents.

Mr. KEATING. You mean the incidents arising out of the beating of those women and men?

Mr. LAKE. No, sir; this one in Walker County; but that is coming next. Once they clear up the Jefferson County deal, they will move right across over to Walker County and work with authorities there and clean up that mess.

Mr. KEATING. There is a grand jury investigation pending in what county?

Mr. LAKE. In Jefferson County, circuit court.

Mr. KEATING. In other words, by the Alabama officials?

Mr. LAKE. Yes, sir.

Mr. KEATING. And you are confident that they will return indictments?

Mr. LAKE. Yes, sir.

Mr. JENNINGS. Jefferson County has in it the city of Birmingham?

Mr. LAKE. Yes, sir.

Mr. JENNINGS. And they have courts that sit virtually all the time?

Mr. LAKE. Yes, sir.

Mr. JENNINGS. Walker County is a rural county where whatever court would have jurisdiction, or the power to indict for such offenses, such as have been detailed here, would meet at stated intervals?

Mr. LAKE. I am not familiar with the Walker County set-up. However, these things naturally go before a grand jury first.

Mr. JENNINGS. I know from experience; I live in a State where we have a large city, such as the city I live in, where the criminal court is in session virtually all the time. But in the rural counties, the court will meet at stated intervals, such as three times a year, unless a special session were called. So that there would be no opportunity to present a matter to the grand jury until the court met in the regular course.

Mr. LAKE. I believe Mr. Tawick could clear up that point about Walker County in 1 minute.

Mr. JENNINGS. Is he here?

Mr. LAKE. Yes, sir.

Mr. JENNINGS. Where is he?

(Mr. Trawick came forward.)

Mr. JENNINGS. Tell us at what intervals the court in Walker County, that has jurisdiction in criminal matters, meets.

Mr. TRAWICK. It does not have any set period. It is always called by the circuit judge. The last meeting I believe was held on April 20, if I am not mistaken. That sitting of the grand jury was not adjourned. It was supposedly recessed, but it has not been called back. It had not when I left Jasper yesterday afternoon.

Mr. JENNINGS. Does the judge reside in Walker County?

Mr. TRAWICK. Yes, sir; he lives in Jasper.

Mr. JENNINGS. Does he hold court in any other county besides Walker?

Mr. TRAWICK. In Birmingham occasionally when he is asked by the Supreme Court to hold court.

Mr. JENNINGS. He is a judge of the Criminal Court of Walker County?

Mr. TRAWICK. Yes, sir.

Mr. JENNINGS. And can convene a jury, a grand jury, when he desires to?

Mr. TRAWICK. That is right.

Mr. LANE. I was asking about this first man that was taken into the woods.

Mr. LAKE. Mr. Beard?

Mr. LANE. I was asking whether or not there was any relationship between that man and these other six persons and you answered that you would prefer not to get into that at this particular time.

Mr. LAKE. Yes, sir; I would prefer not to go into that point. It is a matter that is being investigated now.

Mr. LANE. In any event, he was taken into the woods and somebody held a pistol or a rifle to his head, is that right?

Mr. LAKE. Yes, sir.

Mr. LANE. And showed him a letter to read?

Mr. LAKE. Yes, sir.

Mr. LANE. And you said that he noticed that it was in the handwriting of three different persons?

Mr. LAKE. That is right.

Mr. LANE. Did he tell you what the contents of this letter were?

Mr. LAKE. Yes, sir; what I said before. It accused him of nonsupport, bootlegging, and gambling. I believe that pretty well rounded it out.

Mr. LANE. Will you tell me now whether or not in the course of your investigation you reported this other incident that has been mentioned about the bombing of the Negro minister's home, or his residence?

Mr. LAKE. That was on the night of or early in the morning of March 25, I believe. I just missed covering that story. I went out the next day, but we had two other men working on it. I was sent

back to city hall. I did go out there the next morning and I saw three houses that had been dynamited.

Mr. LANE. That was March 25?

Mr. LAKE. March 25 is when I went out there. I believe that is the date.

Mr. BYRNE. You say there were three houses.

Mr. LAKE. Yes, sir; three houses.

Mr. LANE. And the dynamiting took place the day before?

Mr. LAKE. Well, early that morning. I believe the reporter who went right to the scene told me about 10 o'clock in the morning; I may be wrong. There were three blasts about 1 minute apart. The sides of the houses were caved in. They were unfit for further use.

Mr. KEATING. They were adjoining houses?

Mr. LAKE. Yes, sir; next to each other, side by side. One was right on the corner.

Mr. LANE. Where were they located, in what town or city?

Mr. LAKE. They were located in the city of Birmingham in an area known as North Smithfield.

Mr. LANE. And in one of these homes lived a minister of the African Methodist Church?

Mr. LAKE. Two of the homes were purchased by him. They were in process of being remodeled so that he could move in.

Mr. LANE. And the third home was owned by whom?

Mr. LAKE. I do not know, to be frank with you. If I had known this was coming up, I could have checked on it.

Mr. LANE. Do you have any information with reference to this bombing at all with you?

Mr. LAKE. No, sir; I do not.

Mr. KEATING. Were the homes occupied?

Mr. LAKE. None were occupied.

Mr. KEATING. Two were owned by the bishop of the African Methodist Church?

Mr. LAKE. That is my understanding.

Mr. KEATING. Was the other owned by a Negro?

Mr. LAKE. Yes.

Mr. LANE. Is that a white section of the city?

Mr. LAKE. The city of Birmingham has a zone law which sets aside a certain section for whites and Negroes. That particular section was zoned for whites.

Mr. DENTON. That bombing took place on the 25th of March?

Mr. LAKE. Yes.

Mr. DENTON. Has anybody been indicted for that yet?

Mr. LAKE. No, sir.

Mr. DENTON. How much investigation is being made of it?

Mr. LAKE. The police department assigned a squad of men to the case. What they found out they will not tell the newspapers.

Mr. DENTON. Was their complaint that this colored preacher was moving into a zone for whites?

Mr. LAKE. That is the inference that I draw.

Mr. DENTON. Have you heard of other instances of this nature where people have been beaten by hooded mobs or hooded groups?

Mr. LAKE. Yes. I went out on all the calls. I went to every one of the calls.

Mr. DENTON. How many calls have you made of that kind?

Mr. LAKE. I went to the home of Hugh McDonal at the Brookside Cafe. Billy Rochester——

Mr. DENTON. Where is the first one?

Mr. LAKE. All of these are in Jefferson County. There was Billy Stoveall, a Navy veteran——

Mr. DENTON. Where else did you go?

Mr. LAKE. I went to Dora. I went to Shelby County the other morning. We were convinced that was not a Ku Klux Klan deal of any kind.

Mr. JENNINGS. You spoke of a Navy veteran. Did you go to the home of a Navy veteran?

Mr. LAKE. Yes.

Mr. JENNINGS. Had he been beaten?

Mr. LAKE. Yes.

Mr. JENNINGS. Was he a white or colored man?

Mr. LAKE. White.

Mr. DENTON. What other places did you go to?

Mr. LAKE. Those are the places where either meetings or threats occurred.

Mr. DENTON. Were those people beaten by hooded men, or other groups of people?

Mr. LAKE. Hooded men.

Mr. DENTON. There were four places that you went, the two that you have told about and two others.

Mr. LAKE. I beg your pardon.

Mr. DENTON. You have detailed two cases.

Mr. LAKE. There are four cases that I have not discussed so far.

Mr. DENTON. Did you talk to those particular people?

Mr. LAKE. Yes.

Mr. DENTON. What was the first one that you brought up?

Mr. LAKE. The first one that I was called out on was Mrs. McDonal.

Mr. DENTON. When did that take place?

Mr. LAKE. I believe it was June 10.

Mr. DENTON. What did you find out on that investigation?

Mr. LAKE. Mrs. McDonal told me that at about 10 minutes to 10 she was sitting in her home and someone knocked on the door. She was talking on the telephone at the time with a friend. She went to the door and looked out. She could see two persons with hoods over their heads. She thought it was kids playing and said words to the effect, "You kids go away." They said, "We are not kids; we want you." She got a better look and said there was a car pulled alongside the highway, and she saw these men with robes on and she went over to the phone and called the police and told them there were some men trying to break into her home. She ran into her bedroom and tried to get out her shotgun. While she was doing that someone busted the front window, reached in and unlocked the door to the house. Four men ran into the bedroom where she had her shotgun which she was trying to put shells in. One took the shotgun away from her and ran out of the house with it. Someone else tapped her on the head. She did not know what with, but she thought possibly it was a blackjack. She said she struggled free for a moment and lifted the hoods on all four of the persons. They threatened to kill her for that. They told her they had come to get her because she had been bringing men

and women together at her place. They also accused her of selling whisky in her home. She denied the charges to both the hooded men and to me, of course.

She told me certain men were roaming around her house looking into closets and so on, and they took her outside where a cross was burning about 6 feet high. They had a mock argument whether to burn, hang, or lash her. They threatened to do either of those things over and over again, and finally they just decided if she would be all right they would not do anything to her, but warned her they would be back again if they heard of any other disturbances.

Mr. KEATING. There were no prayers at this meeting?

Mr. LAKE. They offered to pray for her.

Mr. JENNINGS. Did she get her shotgun back?

Mr. LAKE. No, sir.

Mr. JENNINGS. They took her shotgun and prayed for her?

Mr. DENTON. How many men were at her home on that occasion?

Mr. LAKE. Approximately 16 carloads.

Mr. DENTON. What was the date of that?

Mr. LAKE. I believe that was the night of June 10.

Mr. KEATING. Was that in the city of Birmingham?

Mr. LAKE. In an area known as Westwood 5 miles northwest of the city. Her home is on the main highway.

Mr. KEATING. Is it in the same county as Birmingham?

Mr. LAKE. Yes, Jefferson County.

Mr. DENTON. Is that all that happened in that case?

Mr. LAKE. Yes. That is a rough outline of what happened.

Mr. DENTON. Did she make any complaint to the police about this?

Mr. LAKE. Yes. She called the deputy sheriff's office. She called the FBI first.

Mr. DENTON. You say that she identified three of the men?

Mr. LAKE. Well, she looked at their faces.

Mr. DENTON. Have there been any prosecutions on those cases?

Mr. LAKE. No, sir; not yet.

Mr. DENTON. Have there been any charges made?

Mr. LAKE. There have been no prosecutions in any of these Jefferson County cases.

Mr. DENTON. But they are under investigation?

Mr. LAKE. Yes. They will be ready to go.

Mr. DENTON. Now, the second case that you told us about. What was the person's name?

Mr. LAKE. On the same night there was another incident. As a matter of fact, it happened just before Mrs. McDonal——

Mr. DENTON. Where was that?

Mr. LAKE. That happened in another place called Brookside not far from Westwood in Jefferson County, and about 16 carloads of men drove up to a small cafe called the Brookside cafe.

Mr. DENTON. Let me ask you something about that. Is that a white or colored cafe?

Mr. LAKE. It is like many southern places. They had a partition through the center, Negroes drinking on one side and whites drinking on the other. They served food that way.

Mr. DENTON. Was it a tavern?

Mr. LAKE. I would call it a tavern. He called it a cafe.

Mr. DENTON. Was it operated by a white or colored person?

Mr. LAKE. By a white person named Steve Marshalar.

Mr. DENTON. What took place there?

Mr. LAKE. Hooded men came to them and said they wanted to talk to him in the back. They passed through the store with him and went out the back way. They burned a cross there while these hooded men were taking Mr. Marshalar to the back. A cross was burning in front of the place. I have the exact words here of what they told Mr. Marshalar. I would just as soon read them.

Mr. KEATING. These words were given to you by Mr. Marshalar?

Mr. LAKE. Yes. These are the notes that I took on them. He said, "They told me you have got to keep those niggers down." That was told to him by one man, and another hooded man said, "we are tired of the Catholics running this town."

Mr. KEATING. This town?

Mr. LAKE. This town, yes. Mr. Marshalar is a member of the Russian Orthodox Church, and there are quite a few members of the church in that community.

Mr. DENTON. What did they do to him?

Mr. LAKE. They did nothing to him. There was no physical violence to him at all.

Mr. DENTON. Were there any prayers there?

Mr. LAKE. Not that I recall. He said that the trip was made as a warning to him.

Mr. KEATING. Were any weapons brandished there?

Mr. LAKE. It was the same gang. There were some pistols. He said the men had pistols.

Mr. DENTON. You told us that there was one other case.

Mr. LAKE. A couple of others.

Mr. DENTON. When did the next one happen?

Mr. LAKE. Well, I am not giving these to you in chronological order. The first one happened on the night of June 1.

Mr. DENTON. Where was that?

Mr. LAKE. That happened at a place called Upper Coalburg.

Mr. DENTON. Where is that?

Mr. LAKE. That is a small mining community, oh, 12 miles north of Birmingham.

Mr. DENTON. Tell us what happened there.

Mr. LAKE. This is the story that was told me by a man named Billy Rochester. He is a 42-year-old crippled miner. His back was broken in a mine last year. Billy and three of his neighbors were at his house when I went to call on him on a Saturday morning. I told him that I understood there had been a meeting in that area. He asked me for my credentials. He told me he had been instructed not to tell anyone his story unless they could show credentials. I flashed my press card at him and that satisfied him that I had credentials. He told me that on the night of June 1, about 8 oclock, he was sitting in his home when two hooded men came to—well, he did not know whether they were hooded at the time—his door, and kept on calling for Billy to come on out. His wife answered the call and told the men to come in. They would not come in. Finally, two of them came up and opened the door, and they were followed into the house by two others. Rochester told me he just stood there as soon as he

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saw they were hooded. He told them to come on in. He said two of them jumped in between him and his rifle, one grabbed him on each side and hurried him out of the house down to a point about 75 yards away, where there was a line of cars parked.

Mr. DENTON. How many cars were there?

Mr. LAKE. Only about seven or eight cars were involved. He said when he got there he saw his friend Billy Hamilton had already been put into the car by the men. He said they drove the car away to a point about 5 miles in the woods. They took Billy Hamilton out of the car and told him he was going to have to stop drinking and going to have to support his family better. They stripped them and flogged them about 20 to 21 times, the way Rochester put it.

Mr. KEATING. Hamilton was flogged?

Mr. DENTON. He is the crippled man?

Mr. LAKE. No. Rochester is the crippled man. He was held and forced to watch it. He said that after the flogging they made Hamilton face him and told him this is just a sample of what you are going to get if we hear one more thing about you, and Rochester said that they accused him of nonsupport and not working. Rochester said that he had taken a plaster cast off his back only 2 days before. He wore a heavy brace all over his back. He was unable to do any work of any kind. They left both the men there.

Mr. JENNINGS. How did he get this injury for which he wore this brace?

Mr. LAKE. In a mining accident last August.

Mr. JENNINGS. He was a coal miner?

Mr. LAKE. Yes.

Mr. LANE. And they accused him of nonsupport of whom?

Mr. LAKE. His family.

Mr. LANE. His wife and how many children?

Mr. LAKE. I believe two children. I may be wrong about that.

Mr. LANE. Did they live with him?

Mr. LAKE. Yes.

Mr. DENTON. While he had a broken back?

Mr. LAKE. That is what Rochester told me; yes.

Mr. LANE. He lived with his family?

Mr. LAKE. Yes.

Mr. KEATING. Was his family on relief in this community, or do you know?

Mr. LAKE. They told me they were not. He told me all his bills were paid up. He went scurrying around the house digging out bills to show me the way they had been stamped "paid."

Mr. JENNINGS. How long had he been disabled as the result of that accident?

Mr. LAKE. I believe since last August.

Mr. JENNINGS. About 8 or 9 months. I take it he must have gotten unemployment benefits as a result of his accident.

Mr. LAKE. I believe so. I believe he was drawing what the miners call a John Lewis check.

Mr. JENNINGS. Of course, he would get some compensation under the State law, having been injured in an accident.

Mr. DENTON. When did the fourth case take place?

Mr. LAKE. The Stoveall case took place—that was on a Tuesday night, I believe—it was on June 14, Tuesday night, at about 11:45 p. m. Billy Stoveall was at his home in North Birmingham just outside the city limits. He lives about 300 yards outside the city limits of the city of Birmingham. About 11:45 he was at his home with his two children, ages 8 and 10. I believe they were in bed, and someone called him and told him they wanted him. He went to the front door. Finally two of them came on in. I am a little hazy about it, I will be frank with you, but anyway, I know they dragged him out of his house. They just dragged him out of his house to their car. He told me that they were wearing hoods and robes. There was a car pulled up in front of his house and they rushed him in that. His 10-year-old son told me that after someone had dragged his daddy out a man came in, looked around the house and asked for Mrs. Stoveall. She was working at the time. She worked until midnight and she was working in a cafe in North Birmingham. The little boy said the men told him if they got into a fight or anything to go next door to a neighbor. Then they went out of the house and came back to it again and looked through the window at the two children and then went back to the car. The boy told me that he and the girl stayed in bed; they did not do anything. They were there when Mrs. Stoveall got home some time later. Stoveall said he was taken from this car to a point—and we went back to it later on and measured it, and I believe it is about 8.3 miles away. He was taken up into a pretty heavily wooded section and was beaten there. They made him strip and they beat him.

Mr. DENTON. How many times?

Mr. LAKE. I forget the number of times. I believe Stoveall said 15 times.

Mr. BYRNE. With a strap?

Mr. LAKE. He did not say what it was.

Mr. DENTON. What was he accused of?

Mr. LAKE. Mr. Stoveall did not want to talk about it. He said that at one time they accused him of nonsupport.

Mr. DENTON. How many times did they flog him?

Mr. LAKE. I cannot recall now. I believe he told me about 15 or 20 times. He said they flogged him a good number of times. He was bruised.

Mr. DENTON. You have told us about these four cases. You told about two others first. There were six. Do you know of any other cases?

Mr. LAKE. No. This night riding started on the night of June 1, as near as we can determine it.

Mr. JENNINGS. Of this year?

Mr. LAKE. This June 1.

Mr. BYRNE. You had no knowledge of any of these happenings prior to the 1st of June?

Mr. LAKE. No, sir; we cannot find any trace of any night riders before that night.

Mr. BYRNE. And all of these were at night?

Mr. LAKE. Yes.

Mr. KEATING. Have you ever seen one of these Klansmen in his uniform?

Mr. LAKE. No, sir; I have seen the uniform. I have not seen any of the Klansmen wearing one.

Mr. JENNINGS. Have their uniforms apparently been manufactured, a robe with a hood attached with holes in it?

Mr. LAKE. I tried one on the other night for size and it looked to me like it was a home-made job. I understand they are manufactured. I asked one of the officers working on it the other day whether or not they were manufactured, and he told me he did not know.

Mr. KEATING. Are the officers of this organization generally known?

Mr. LAKE. No, sir. We have never used the names of the four men who have been working on this case.

Mr. KEATING. No. I claim to know who the hooded leaders are; do you? I am not going to ask you if it will embarrass you.

Mr. LAKE. I will put it this way: Just in the course of gathering news of course I came across a lot of information which was immediately turned over to the State men. We put nothing in the paper which would in any way jeopardize the cases which we knew were coming up and which will come up within a matter of days or hours.

Mr. KEATING. Have you been subpenaed as a witness in the State courts?

Mr. LAKE. No, sir.

Mr. KEATING. Do you expect to be?

Mr. LAKE. I doubt it, because everything that I turned over to the State men—names and everything else—were fully followed up by the State men.

Mr. KEATING. There has been a wide field of liberality given to you in your testimony, and I would like to ask you this. Have the officials in Alabama acted promptly and vigorously in apprehending these offenders, or not?

Mr. LAKE. My only contact in Alabama with the law has been through these four State men. Those men have worked. They came in the night after Mrs. McDonal was snatched from her home.

Mr. BYRNE. That was June 3?

Mr. LAKE. No, sir; about the 10th.

Mr. JENNINGS. The Governor of the State of Alabama has actively advocated and brought about and very materially aided in bringing about the enactment of a law making it illegal to wear a hood or robe.

Mr. LAKE. That is true. These four men came to Birmingham. I went to see them immediately. I wanted to know just how sincere they were in trying to stop this thing. They told me they were sent there by the Governor with one idea in mind, to smash it, and that is what they were going to do. During 2 weeks following that I saw those men any hour of the day and night; I would stop by any time I had heard anything, and I do not think they slept in weeks. They have done a darned good job and they feel they are set on these Jefferson County cases.

Mr. KEATING. Has this activity been limited to Jefferson County and Walker County, this night-riding activity?

Mr. LAKE. As near as we can find out; yes. If there have been other instances, we have not been able to get the people to talk to us about them.

Mr. KEATING. It appears to you to be a night-riding campaign initiated on or about the 1st of June in a localized community?

Mr. LAKE. That appears to be it.

Mr. KEATING. Has it been directed primarily against whites rather than against Negroes?

Mr. LAKE. We have come across no case since June 1 involving a Negro with one exception. I believe early last Saturday morning I was called at home about 3:30 a. m. and was told there was a cross burning in a portion of Birmingham known as Pratt City. I went out there immediately and I found that the address was a Negro home. There were four Negroes sitting on the front porch and a fellow named Willie Jackson lived there. He told me he had looked out his window and had seen some man lighting a cross. It was a small cross about 3 feet high, very crudely constructed, wrapped with burlap, and I believe the burlap had been dipped in kerosene. The cross did not burn very well. It just burned right in half, as a matter of fact, and was out before I could get out to see it. Jackson told me that he had no idea who did it. He saw only one man. He heard no cars in the area.

Mr. KEATING. Was that a hooded man?

Mr. LAKE. No. He said he could not tell whether it was a hooded man or not, or a white man or a Negro. The cross was taken to the police station and I asked the officers there—and that was just before I came down here—if they had found out who did it, and they said that they still had not found the man who had put it there, but they were working on it; they were trying to question some neighbors to see whether or not there were any white men in the area that night.

Mr. BYRNE. You think you have told perhaps all you know about these matters completely?

Mr. LAKE. Yes.

Mr. BYRNE. In other words, you feel confident personally that you have imparted all the information you possess?

Mr. LAKE. Yes; all I would like to say about these incidents.

Mr. LANE. Did you find out in any of these investigations whether or not the local police had made any arrests, or intended to make any arrests?

Mr. LAKE. Of course, the Birmingham Police Department are out of this question. It is outside of their jurisdiction. So far as the sheriff's office is concerned, I do not know. I have made no contact with the sheriff's office. Our courthouse man keeps a constant check on him. I have heard of no arrests being made up to the time I came here.

Mr. LANE. Then, has there been a real investigation made by the sheriff's office, if you know?

Mr. LAKE. I can say this: He has assigned six deputies working on different incidents out there.

Mr. LANE. Are they working in conjunction with the State officers?

Mr. LAKE. No, sir.

Mr. LANE. Separately?

Mr. LAKE. As I understand it, they probably pool their information. I have never been to one of those meetings where they were working together.

Mr. LANE. It is fair to say that the sheriff's office and the State police officers of Alabama are investigating these cases now, and as you stated, the State officers have been working night and day on the investigation of them?

Mr. LAKE. Yes they have.

Mr. LANE. In fact, they have obtained enough evidence and information so that they can present it to the grand jury.

Mr. LAKE. Of course, that is a presumption on my part. The State solicitor will determine whether or not the evidence is sufficient for that purpose. To the best of my knowledge, they will be ready, as I say, in days to do that, to go before the grand jury. The grand jury has recessed, and the State solicitor has told every member of the grand jury that just the minute he is ready he will call them in session again.

Mr. LANE. You, as one who has been investigating these cases for your newspaper, are satisfied now that the State police and the Governor of Alabama are doing everything humanly possible to stop this practice?

Mr. LAKE. I certainly am. I am satisfied to the *n*th degree with the work done by these men operating under the instructions of Governor Folsom.

Mr. LANE. Do you think it is being handled adequately by the investigating officers?

Mr. LAKE. Yes.

Mr. KEATING. Do you have any recommendations with regard to any of the legislation pending before us, the bill to further secure and protect civil rights, or any of the bills relating to lynching?

Mr. LAKE. No, sir; I have no recommendations.

Mr. BYRNE. Is that all, gentlemen?

Mr. HOBBS. I just want to ask you, sir, if you asked to come here?

Mr. LAKE. No, sir.

Mr. HOBBS. How were you invited to come here?

Mr. LAKE. I had a phone call from Mr. Foley, and I turned Mr. Foley over to the managing editor of my newspaper, and he asked Mr. Foley what our rights were in the matter, and the newspaper office top-flight officers had a conference about it. It was indicated that if I did not want to come down they would subpena me to come down. The paper told me to come down here and accept the subpena here. That is the way that it came to me.

Mr. HOBBS. And did you hear the answer that was made when you say your managing editor was told that if you did not come you would be subpenaed?

Mr. LAKE. No, sir. The managing editor told me that was what the conversation was. I got the telegram a short while later. He told me to be here at 10:30, and I immediately sent a telegram back and said that I would be here.

Mr. HOBBS. A telegram from whom?

Mr. LAKE. I do not recall. I believe it was from Mr. Celler. I believe that is who it was from.

Mr. HOBBS. You believe it was from Mr. Celler?

Mr. LAKE. Yes. As a matter of fact, I saw it for only a minute. One of our writers was busy incorporating the text of the telegram in the story, and he showed it to me and I have not seen it since.

Mr. HOBBS. You do not have the telegram in your possession at the present moment?

Mr. LAKE. No, sir; I do not.

Mr. BYRNE. I think, Mr. Hobbs, I can straighten this situation out. I have here a copy of a wire addressed to Clancy Lake, Birmingham News, Birmingham, Ala. It reads as follows:

House Judiciary Subcommittee directs you to appear before it at 10:30 a. m. June 29, Room 346, Old House Office Building, Washington, D. C.

EMANUEL CELLER,
Chairman, Judiciary Committee.

Official business is the basis.

Mr. HOBBS. May we have that telegram inserted in the record at this time?

Mr. BYRNE. Surely.

(The telegram referred to is as follows:)

JUNE 25, 1949.

CLANCY LAKE,
Birmingham News, Birmingham, Ala.:

House Judiciary Subcommittee directs you to appear before it at 10:30 a. m. June 29, Room 346, Old House Office Building, Washington, D. C.

EMANUEL CELLER,
Chairman, House Judiciary Committee.

Official business.

Mr. KEATING. Is your newspaper a syndicated paper or is it privately owned?

Mr. LAKE. Privately owned.

Mr. LANE. Is it a small paper or a large paper?

Mr. LAKE. It is a large paper. It is the "South's greatest newspaper." That is our slogan.

Mr. LANE. The "South's greatest newspaper"?

Mr. LAKE. Yes.

Mr. BYRNE. Are you in competition with the Atlanta paper?

Mr. LAKE. The Journal? Yes, sir. We are going after them.

Mr. LANE. What is the circulation of your daily paper?

Mr. LAKE. It is about 200,000.

Mr. LANE. The daily paper, an evening paper or afternoon paper?

Mr. LAKE. Yes, sir. The afternoon paper is the Birmingham News and the morning side is the Herald.

Mr. BYRNE. Thank you very much, Mr. Lake.

Mr. FRAZIER. May I ask a question?

Mr. BYRNE. Yes.

Mr. FRAZIER. Mr. Lake, you appeared here in response to the telegram you received?

Mr. LAKE. Yes, sir.

Mr. FRAZIER. You have not examined any of these bills pending before the committee?

Mr. LAKE. I took a look at some of them yesterday, some of the antilynch bills. Mr. Foley showed me about 13 of them, I believe.

Mr. FRAZIER. You did not see them prior to the time you arrived here?

Mr. LAKE. No, sir.

Mr. FRAZIER. You never examined them and have no suggestions to make in connection with any of the pending bills?

Mr. LAKE. No, sir; I do not, now.

Mr. FRAZIER. In the various cases that you investigated I believe you stated there were no Negroes involved, in these various cases, other than the House case?

Mr. LAKE. None of these cases since June 1.
Mr. FRAZIER. They are all white people?
Mr. LAKE. The only time there was any question of race or religion involved was when they went to the Brookside Cafe. That was the only point I discovered.
Mr. FRAZIER. That was a cafe for colored and white people?
Mr. LAKE. Yes, sir.
Mr. FRAZIER. It was run by a white man?
Mr. LAKE. Yes, sir.
Mr. FRAZIER. They had a talk with the white man, but no violence occurred?
Mr. LAKE. That is correct.
Mr. FRAZIER. In all these cases where you made the investigation for your paper, as I understood from your testimony, they involved the moral conduct of the people in that particular community?
Mr. LAKE. That is right.
Mr. FRAZIER. That is what you gathered from your investigation?
Mr. LAKE. That is correct.
Mr. LANE. Did that one in the cafe involve the moral conduct of the people in the community?
Mr. LAKE. No, sir. Except for that one case, as I pointed out.
Mr. LANE. In that one the word "Catholic" was used.
Mr. LAKE. Yes, sir.
Mr. LANE. Was that the religion of the cafe owner?
Mr. LAKE. Yes, sir. He is a member of the Russian Orthodox Church, which I believe is in essence Catholic.
Mr. KEATING. The Greek church?
Mr. BYRNE. It is the Greek Orthodox. It is an original church, not Catholic. Is that all now?
Mr. KEATING. Mr. Lake, you have been very careful in your answers to say that none of these incidents you investigated since June 1 involved racial questions or Negroes.
Have you investigated questions prior to June 1 which did involve cases of violence or property damage to Negroes?
Mr. LAKE. Just one case involving a threat.
Mr. KEATING. Was that apart from the bombing of the houses?
Mr. LAKE. Yes, sir. It happened across the street from the house. It happened about 8 weeks ago.
Mr. KEATING. Did that involve a Negro?
Mr. LAKE. Yes, sir. That involved a Negro.
Mr. KEATING. Did you investigate that case?
Mr. LAKE. Yes, sir; I did.
Mr. KEATING. Did it have anything to do with hooded men?
Mr. LAKE. No, sir; there were not any hooded men involved. There was one man who said he was a Klan member involved.
Mr. KEATING. Was that the one where they burned the cross in the front yard?
Mr. LAKE. Oh, no, sir. That happened last Saturday morning.
Mr. KEATING. I do not want to get into a new field of inquiry which will not be fruitful, but was this one case involving a Negro anything that you feel would be pertinent to this inquiry?
Mr. LAKE. It is pertinent to the question of the bombing of the Negro house out there.

Mr. KEATING. It has a relation to that?
Mr. LAKE. Yes.
Mr. KEATING. Tell us briefly about it.
Mr. LAKE. It is a question of zoning. This area called North Smithfield is zoned for white persons. There is a street called Center Street which runs through the center of the area.
At a recent city commission meeting the commission voted to establish all the territory west of that street to be set aside for white persons. On the east side there would be a 50-foot buffer strip established and it would be zoned for commercial purposes. No one could move into it except for commercial purposes. The area east of that would be zoned for Negroes.
However, a few months ago a Negro moved into one of the houses out there. His name was William German. He moved in on a Saturday afternoon and, a short while after he moved in, a man appeared and told him his name was Robert E. Chambless, said he was an officer, and a member of the Robert E. Lee Chapter of the Ku Klux Klan and he had better be out by midnight.
Mr. KEATING. This man was hooded?
Mr. LAKE. No, sir; he was not hooded.
Mr. KEATING. Did the Negro tell you that this man is in fact the man he said he was?
Mr. LAKE. Yes, sir. I saw the Negro. I saw Robert Chambless, and I saw a city detective who came up on the case.
Mr. KEATING. Chambless admitted he had been there and said that?
Mr. LAKE. Yes, sir; Chambless admitted he was there. He told me a few days later. He came in with a sworn statement made up by the Cyclops of the Robert E. Lee Klan.
Mr. KEATING. What is the Cyclops, the head of this outfit?
Mr. LAKE. The Cyclops is the head of this chapter, of the Robert E. Lee Chapter.
Mr. KEATING. Did he sign this as Cyclops of the local chapter of the Ku Klux Klan?
Mr. LAKE. I believe he did.
Mr. KEATING. Did he purport to take an oath as the Cyclops of the Ku Klux Klan?
Mr. LAKE. Yes, sir. He wanted to take it out and have a notary public stamp it and all, and so on, but I was on a dead line and it did not make any difference to me one way or the other whether he had it notarized or not.
Mr. KEATING. Did he purport to be authorized to take oaths in that community as the Cyclops of the Ku Klux Klan?
Mr. LAKE. Yes, sir. He made no secret of it.
Mr. KEATING. Go ahead. Had you finished?
Mr. LAKE. Yes, sir. The Cyclops came in and saw me at the city hall about 2 days later and told me this man Chambless was not a member of the Robert E. Lee Klan. Chambless also told me that he had been trying to get the fellow out of there, that he was not a member of the Klan.
Mr. KEATING. Did the fellow move out?
Mr. LAKE. He moved out that afternoon. Our city building inspector went out there and explained the zoning laws to him, and the Negro moved out.

Mr. FRAZIER. Did he move out because the building inspector told him he was violating the laws of the city?

Mr. LAKE. I asked him; yes, sir; and he told me that was the reason, that the building inspector had instructed him to move out.

Shortly thereafter another Negro moved into the house and he is living there. There already was a Negro minister living in the house next door, and just a short while ago another Negro minister moved in the house that German moved out of.

Mr. KEATING. Do these officers of the Ku Klux Klan down there in Alabama admit they are officers; in fact, boast of it?

Mr. LAKE. Yes. After all, the Ku Klux Klan has a charter. It was organized, I believe, in June of 1946. They are duly chartered.

Of course, there is a fight on on two fronts to revoke that charter. The State attorney general has his men pushing as hard as they can for a court test on that charter.

At the same time there is a move on for a joint resolution of the State legislature to revoke the charter. They found a small paragraph in the State constitution which permits the revocation of any charter of an organization which in the opinion of the legislators is harmful to the State, so there is a move on on two fronts to get rid of the charter, to revoke the charter.

Mr. KEATING. Well, generally speaking, do members of the Klan down there admit such membership?

Mr. LAKE. No, sir; except for the board of directors, the president of the corporation, Dr. Pruitt, and William U. Morrison, and a few others.

A Klansman, when he takes an oath of office, has to swear he will lie about membership. In other words, if you walked up to a Klansman and said, "Are you a member of the Klan?" he is sworn to lie and tell you he is not a member of the Klan.

Mr. KEATING. Just like the Communists?

Mr. LAKE. Yes, sir; that is right.

Mr. KEATING. Generally speaking, if you accused a man of being a member of the Klan the same thing might happen to you that did to our friend Stallworth, or Southworth?

Mr. BYRNE. Stallworth.

Mr. LAKE. If he wanted to cover up, I imagine he would.

Mr. KEATING. Have you been beaten up at all?

Mr. LAKE. No, sir; I have not been touched a bit.

Mr. LANE. Have you been threatened?

Mr. LAKE. No, sir. The only thing I have had is a bunch of cranks call me, and they wanted me to present the other side of the story.

Mr. KEATING. Well, we are used to that, as Members of Congress.

Mr. BYRNE. Thank you very much, Mr. Lake.

Mr. LAKE. Thank you, sir.

Mr. BYRNE. We now have Mr. Paul Trawick. Is that correct?

STATEMENT OF PAUL B. TRAWICK, NEWSPAPER EDITOR, JASPER, ALA.

Mr. TRAWICK. Paul Trawick; yes, sir.

Mr. BYRNE. Mr. Trawick, where do you reside?

Mr. TRAWICK. Jasper, Ala.

Mr. BYRNE. What is your business?

Mr. TRAWICK. Newspaper editor; weekly.

Mr. BYRNE. You are the editor of a weekly?

Mr. TRAWICK. Yes, sir.

Mr. BYRNE. In Jasper, Ala.?

Mr. TRAWICK. Yes, sir.

Mr. BYRNE. What is the name of the weekly?

Mr. TRAWICK. The Union News.

Mr. BYRNE. What is the size of Jasper, the population?

Mr. TRAWICK. Approximately 10,000.

Mr. BYRNE. I beg your pardon?

Mr. TRAWICK. 10,000, approximately.

Mr. BYRNE. I see. How long have you been the editor of this newspaper?

Mr. TRAWICK. Nine months.

Mr. BYRNE. For 9 months?

Mr. TRAWICK. Yes, sir.

Mr. BYRNE. What schooling did you have prior to coming with the company? By the way, how long have you been with the company?

Mr. TRAWICK. Nine months.

Mr. BYRNE. Just 9 months?

Mr. TRAWICK. Yes, sir.

Mr. BYRNE. What did you do before that?

Mr. TRAWICK. I was a journalism student at the University of Georgia. I graduated last year.

Mr. BYRNE. From the University of Georgia?

Mr. TRAWICK. Yes, sir.

Mr. BYRNE. Situated where?

Mr. TRAWICK. Athens, Ga.

Mr. BYRNE. Athens?

Mr. TRAWICK. Yes, sir.

Mr. BYRNE. You have some knowledge regarding something that has happened in your locality around Jasper regarding the Ku Klux Klan?

Mr. TRAWICK. I do.

Mr. BYRNE. Would you kindly tell us for the record what you know about it and what activities you have observed, as it has come to your attention?

Mr. TRAWICK. Yes, sir. I have it all here.

Mr. BYRNE. Good for you.

Mr. TRAWICK. The testimony in which I presume you gentlemen are interested began with a radio broadcast over the station in Jasper, Ala., WWWB, on Monday, June 20, at 6 p. m.

Mr. BYRNE. Yes.

Mr. TRAWICK. That program was presented on the same day; in fact, immediately after the incident of the beating of Mr. Clark Stallworth down in Sumiton, 16 miles from Jasper.

Mr. BYRNE. Yes.

Mr. TRAWICK. The program script had already been written at the time the Associated Press news release came through the radio station about the disturbance down at Sumiton, and we added it to the program.

Mr. BYRNE. Yes.

Mr. TRAWICK. I have a script of the program here, which I will not bother you with, but I have the copy if you would like to see it.

Mr. BYRNE. You could make it a part of our record, could you not?

Mr. TRAWICK. Yes, sir.

Mr. BYRNE. You can offer it for the record?

Mr. TRAWICK. All right, sir.

Mr. BYRNE. Gentlemen, do you have any objection to it going in the record?

Mr. LANE. How long is it?

Mr. TRAWICK. Three typewritten pages.

Mr. BYRNE. There is no need to read it, but is there any objection to putting it in the record? Not at all. You may leave it and it will be put in the record.

(The radio script is as follows:)

Thank you, Charlie Good evenin'

These folks up here at the radio station have been kind enough to give me a few extra minutes tonight so that I can ramble on for a little longer than usual. I've got something sorta special I'd like to talk with you about tonight.

Most of you have probably heard that we had a little disturbance here in Jasper around midnight Saturday A cross was burned on the lawn of the house where Buck Franklin lives, up on Fifth Avenue. That's at 1408 Fifth Avenue. Neighbors have said that there was no mob Somebody got out of a club coupe automobile, placed the cross against a tree there in the yard, set fire to it, and drove off. Jasper Police Chief Buddy Clark has said that there was no mob activity in Jasper Saturday night He said today that the cross was burned by some young friends of Mr. Franklin who wished to play a joke on him. That's a pretty serious kind of a joke.

You've all read the newspapers within the last few weeks. It's plain to see that the mob activity in the rest of the State isn't caused by practical jokers. Here's the latest, and it's right here at home in Walker County.

And over in Birmingham, the American Legion and other groups have banded together to fight the increasing spread of mob violence. But they got a warning last week.

You know, every night up here at 6 o'clock I sit in front of this microphone and spout off the news of the day here in Walker County. I usually try to stick right to the news, give it to you as it happened, with no comment or opinion on my part. Oh, I slip a little every Friday night when I try to let off steam and tell you, as the editor of the Union News, what I think of what's going on in the local news. And it's still mostly the news as it happens, and little opinion on my part.

But tonight I don't want to give the news, at least no more than I've already told you. I don't want to give any opinions as the editor of the Union News. I just want to talk for a minute as Paul Trawick, average citizen, Walker County, United States of America. I just want to take advantage of that inherent right that belongs to every one of us in our country—freedom of speech. And just why do I want to talk about this particular subject that I've already started on? Well, there are lots of reasons. For one thing, I've seen what a situation of this kind can do to a town and a community and a county. Do the names of Monroe, Ga., or Walton County, Ga., mean anything to you? Do you remember an incident that took place over there a couple of years ago when four Negroes were killed? It hit all the newspapers all over the country.

They never did find out for sure who did it, but they're still looking. The little town of Monroe was soon swarming with agents from the Federal Bureau of Investigation and the Georgia Bureau of Investigation and almost every other law enforcement agency that could find an excuse to go there and look for the men who murdered four human beings in cold blood. They're still there. And they're still looking. They say they'll stay there until they find out who murdered those people.

It's hurt that little town, as well as the county. For that matter, it hurt the South in general and the State of Georgia in particular. But especially the

town and the county, if you want to be practical Outsiders hold their noses when they pass through They won't stop. There's a busy United States highway running right smack through the middle of Monroe, but nobody stops. They've heard about that place

What does that explain? Just this I live in Jasper, Walker County, Ala. The Lord willing, I'll continue to live here as long as I can pay my own way and enjoy life as much as I have in the past year I just don't want to see that happen in Jasper, Ala. No one has been killed But the violence is still here. Have any of you seen any newspapers other than in Alabama? Alabama's all over the headlines, and it sure is an ugly mess. Those Yankees up there really like to play up things like this. It makes them feel like they're better than we are down here. And it gives us a black eye, as far as reputation with the rest of the country is concerned. It hurts business, if you want to be economic about the thing

But that's not my main kick. Maybe it's just the way I was brought up. I don't like to see anyone get pushed around. Makes me mad. Is it possible that, already, we've forgotten why a lot of guys crossed the ocean a few years ago and fought a war? It is possible that we've already forgotten the thousands of regular Joes who sailed across the pond and died? Most important, have we already forgotten why those guys fought that war? It was for a lot of little reasons Maybe some of the guys were fighting for the right to take their girls to the corner drug store for a cherry soda every time they felt like it. Mainly I think it was because most of 'em felt like I feel, and like you probably feel. They just didn't like the idea of being pushed around.

But as far as remembering's concerned, let's go back a little farther. Remember how that unpleasantness on the other side of the water got started? First, a small group of men got together. There were five of 'em at first. They had a leader. They listened to what he had to say, got a little punch drunk on his talk about power, and stamping out the non-Aryans and killing the Jews, and they were off Other jugheads along the way fell for the same line of palaver and the number grew. He must have had a strong line of gab 'cause they sure fell for it. First thing you knew they were burning school books and pushing people around and telling them how to vote Next thing they were stopping them from voting at all, and then all of a sudden, slam-bang—World War II. Little Sam Miller down the street there on the corner joins up, goes across—and 4 years later they send him home in a pine box. Johnny Jones decides he doesn't like the way things are going over there, so off he goes. They send him home with one leg and half of his face gone.

All that because a few people get a lot of big ideas and try to put 'em into practice. Does that have a familiar ring? Does it sound like anything you've seen in the newspapers or heard over the radio lately that happened right here at home? It does to me. This sort of thing is as old as the hills. Mob violence is just like a poisonous weed. You have to keep fighting it. Human nature's still the same. It's like a boil or a sore that breaks out occasionally. When it happens, something has to be done about it.

The Alabama Legislature has taken the first step. Masks and hoods will be prohibited by law. That's a help. But nothing as simple as a law is gonna kill a thing like this. It takes work on the part of every man, woman, and child in our country. We've got to stand up on our own feet and fight back, or the next thing we know, someone'll be pounding on our door and saying, "I don't like that necktie you wore today. It's subversive. Step outside so I can kill you." No, ladies and gentlemen, if any of you are still listening. I'm no alarmist. I'm not afraid of anything that's been going on in Jasper and Walker County and Alabama. I'm not afraid of it. It's too small so far. But things like this can spread. I remember my dad told me one day that the only way to make sure a snake is dead is to cut its head off. Sometimes though, it's a good idea to kill the poisonous snakes when they're still small. No, I'm not alarmed. I'm just mad. I like living in this old land of ours, and I like it just the way it is. Makes me mad when someone comes along with a lot of bright ideas about mob rule.

'Scuse me. I'll calm down by tomorrow night, promise.

This is Paul Trawick, your Union News editor. Goodnight and 30.

Mr. BYRNE. Give us the substance of it, if you will.

Mr. TRAWICK. There is a very severe denouncement of the recent mob activities over in Walker County there.

In the first part of the program—I might tell you about this—we had a cross burning the night of Saturday, June 18, approximately 12 midnight, at 1408 Fifth Avenue in Jasper.

Mr. BYRNE. A cross burning?

Mr. TRAWICK. Yes.

Mr. BYRNE. Yes?

Mr. TRAWICK. It happened at the residence of one Buck Franklin, and the chief of police in Jasper has stated it was the job of a bunch of kids.

Mr. BYRNE. Yes?

Mr. TRAWICK. That it was a joke.

From that I went through the recent activities in the southeastern part of the county and over in Birmingham, and then criticized the violence quite severely.

Mr. BYRNE. Did you investigate the burning of the cross?

Mr. TRAWICK. I did; yes, sir.

Mr. BYRNE. Did you do that personally?

Mr. TRAWICK. I did.

Mr. BYRNE. Tell us what the results of your investigation were.

Mr. TRAWICK. From what I could derive from the neighbors an automobile, a black club coupe, pulled up in the driveway beside the Franklin residence in Jasper around 12 midnight.

Mr. BYRNE. At midnight?

Mr. TRAWICK. Yes, sir.

Mr. BYRNE. Yes?

Mr. TRAWICK. An occupant of the car—no one could tell me how many persons were in the car, but an occupant of the car got out, took the cross which was soaked in some inflammable substance—I would not say what—and put it against a tree in the yard and set fire to it. It scarred the tree pretty severely. The cross did not burn out entirely.

Mr. Franklin came out and put it out, and he brought his gun, but never found out who it was.

It is my assumption through the statement of the chief of police that the prank was pulled by Mr. Franklin's brother and some of his friends. That is the only information released to us. The tree was scarred. The cross, I imagine, was 6 feet high.

Mr. BYRNE. Yes?

Mr. TRAWICK. And approximately 4 feet in width.

Mr. BYRNE. Yes?

Mr. TRAWICK. And the flames from it scarred the tree up for about 15 feet up the trunk.

Mr. KEATING. Is there bad blood between these brothers?

Mr. TRAWICK. No, sir; not as far as I could determine.

Mr. BATTLE. Did I understand you to say it was a prank?

Mr. TRAWICK. I did not say it was. The chief of police said it was.

Mr. KEATING. You related that incident in the course of your broadcast; did you?

Mr. TRAWICK. Yes, sir. At the conclusion of that broadcast I went from the radio station to the sheriff's office, where Mr. Stallworth was swearing out his warrant for Mr. Godfrey and Mr. Fowler. Mr. Stallworth was there in consultation with the sheriff, so I did not disturb him.

The following morning, Tuesday, June 21, at 8:15, while in my office at the Union News in Jasper, the telephone rang and I answered it. The voice on the other end asked to speak to Paul Trawick. I said, "This is he." The voice on the other end said, "You had better watch your step. You go right ahead and write about these tea parties, but leave this other business alone." He hung up.

Mr. BATTLE. Somebody said that on the telephone?

Mr. TRAWICK. Yes.

I did not try to trace the phone call, because I had had a similar experience in trying to trace a phone call, and that was of no success.

On my radio broadcast that night at 6 p. m., over the same station, I wrote a letter answer to that gentleman's phone call and presented it on my program. I have a copy of that here. I will submit it for the record, if you wish.

Mr. BYRNE. Yes.

(The radio script is as follows:)

ANNOUNCER On last Monday night, the editor of the Union News presented a 15-minute radio program over the local radio station, WWWB, at which time he attacked the recent rise in mob rule and violence which has been prevalent in Walker County during recent weeks. On Tuesday morning, after the broadcast, the editor received an anonymous telephone call in which he was warned to "watch your step. You go right ahead and write about your tea parties, but leave this other business alone." The caller promptly hung up the receiver after delivering the message. This is Mr. Trawick's reply:

"DEAR FRIEND (and I use the term loosely): It was with somewhat mixed emotions that I received your telephone call Tuesday morning. My feelings were quite varied, but I believe my most prevalent thought was an overwhelming regret that you hung up so rapidly. You delivered your message. I didn't have an opportunity to deliver mine. Please permit me this opportunity.

"The things which I would have liked to say over the telephone are, unfortunately, not fit to print here. But, having had time to lose my first flare of temper, I no longer wish to call you the long list of adjectives which I learned from the lips of top sergeants and seamen. Neither will I question the legitimacy of your ancestry.

"In the radio broadcast to which you had reference, I mentioned that I was taking advantage of an American heritage— freedom of speech. Now, I would like to remind you of another great heritage which belongs to the citizens of our country—freedom from fear. You, my dear sir, belong to a minority group which constitutes the greatest threat to that inherent freedom. Because, you see, I know you for what you are It has been said that we are seldom afraid of the things we can see, but are afraid of the things we can't see. And we can see you, but are afraid of the things we can't see. And I can see you Despite the hood which you may wear to cover your hideous face, despite the anonymity with which you cloak your telephone conversations, I can see you. In fact, I can see all the way through you.

"You are the slave trader of years ago. You are the one who trod the decks of the old sailing vessels with the sound of moans and clanking chains beneath your feet. You are the one who walked hand in hand with fear, lest a chain should give and you find yourself confronted with the blind hate which you fathered.

"You are the terrorist of the old West who hung an unconvicted man. You are the lyncher, the hater of anything or anyone who appears to be just as good, or usually better than you are, the destroyer of anything which is not composed or constructed just as you are.

"You are the sadist who caused the gangsterism and violence and bloodshed and grief after World War I. You are the evil rider of the night who descended on hapless Negroes and left them with stretched necks and bloodstained clothes.

"You are the yellow coward who stood behind the lines during World War II and shouted 'Shoot those Jews and wops and niggers as they go up. No one'll ever know who did it.'

"You are the hater of tolerance, the despiser of authority, the one who shouts, 'America for the Americans, no Jews, no Catholics, no niggers, no "fureigners."'

"I even know what you look like. You wear a wool hat over stringy, tousled black hair—when you're not covered up with a robe or a hood. You wear red

suspenders, or a string tie. But your eyes I know best of all. They're red and bloodshot. They's never known love. All they know is hate.

"Knowing all this, I'm not afraid of you, Mr. Anonymous Phone Caller—I feel sorry for you.

"Why? Because I know and understand what it means to be a citizen of our great country. I understand the freedom given us in the Bill of Rights, and I appreciate them. You don't. No; I'm not afraid. But you are!

"You're miserable and your life is all one constant fear—a fear of your own making You've known it always, from your slave-trading days all the way to now, when you fear that every knock on your door may be the long arm of the law. And someday soon it will be. Then you'll realize, too late, that you never knew what it means to be an American

"No, my dear sir, I'm not afraid of you. And I'll go right ahead writing and talking about anything in this land of ours I see fit, so long as it is within the law. That is my limitation. I respect the rights of the individual and the powers of the courts in punishing wrongdoers. Knowing these things, I'll live and be happy in a great Nation under a great flag long after you and your petty animosities have perished.

"Thank you for your telephone call, sir It was educational Even though it consisted of only two short sentences, it enabled me to know you better. Now I realize more fully your insignificance.

"Most sincerely,

"PAUL B TRAWICK."

Mr. KEATING. You did not back down, anyway, did you?

Mr. TRAWICK. To use an understatement; no, sir.

And, incidentally, that program was transcribed and broadcast over the Mutual Broadcasting System, which I presume is my reason for being here, to the best of my knowledge.

Following Tuesday's radio broadcast that night around 6:45, I returned to my office at the Union News and there was a telephone number on my desk, and a request for me to call the number. I did and I found myself talking to Fred E. Hoagland, Jr. He is an employee of the Stanfield Funeral Home in Jasper.

Mr. Hoagland stated to me that he would like to talk with me concerning the attack on Mr. Stallworth in Sumiton, Ala. I made an appointment with him for 9 p. m. and met him at that time.

He said he wished to make it known that any part which he or his parents may have had in any plan to intimidate and attack Mr. Stallworth was unknowing, unintentional, and unpremeditated.

Mr. Hoagland is the son of the Mrs. Hoagland who was driving the taxicab the day Mr. Stallworth was in Sumiton.

Mr. Hoagland, Jr., said that he was in Sumiton on business on Monday, June 20, when he saw his father. His father told him to see his mother, Mrs. Fred Hoagland, and tell her that Roscoe Fowler wanted to see a newspaper reporter. Mrs. Hoagland was driving a taxicab at the time, and was interviewed by Stallworth. At that time Mrs. Hoagland made the statement that she was in favor of Klan activities because it was the only law they had. That is, in Sumiton.

Upon completion of the interview, Mrs. Hoagland delivered the message from Mr. Fowler, which was followed by the attack on Mr. Stallworth when he went to see Fowler.

The younger Mr. Hoagland stated that he would like to see Mr. Stallworth—I talked to him Tuesday—and apologize to him personally for any part which he or his parents may have had in his trouble, and that he wished to make it plain that no offense was intended or known on the part of him or his parents.

In the Union News on Thursday, June 23, I ran an editorial which was entitled, "A Disgrace to the County."

On Thursday, June 23, after that paper went out, I went to the office of the Walker County sheriff, Grover B. Baggett, and engaged in conversation with him. When I walked in Sheriff Baggett had in his hand a copy of the editorial. Turning to the editorial he stated he believed the editorial was unfair and degrading to the law enforcement agencies of Walker County.

In continuing his remarks Sheriff Baggett also stated that his office was doing the best work possible under the circumstances to cope with the situation of hooded mobs and violence which has been prevalent in the county in recent weeks. He stated that his office is understaffed and unable to assign any more personnel to the combating of mob violence within the county.

When questioned about a statement of a man in Dora, Ala., made the week before, that, "There is no law in Walker County" he stated there would be more and better law enforcement within the county if the people would cooperate with the law enforcement agencies and inform them of threats, disturbances, and the like.

Concerning the statement in the editorial that "several" persons around Sumiton and Dora were in favor of mob activities and hooded raids because "it is the only law we have down here" the sheriff stated that he had heard of one person making such a statement.

Concerning the incident mentioned in the editorial where a deputy was informed of a flogging in the county but did not investigate, he seemed reluctant to comment. As a matter of fact, he did not.

Sheriff Baggett requested that the newspapers in general and the Union News in particular confine themselves to requesting the cooperation of the people with the law enforcement agencies rather than devoting their columns to destructive criticism.

On Thursday, June 23, at 12:30 a. m. in Parrish, Ala., a cross was burned in the front yard of Mr. and Mrs. Robert Bickerton. On the following day, Friday, June 24, a man came to my office and requested to see me. I was in Birmingham at the time. The message which he wished to deliver to me is included in my radio broadcast over Station WWWB that night at 6:30, Friday night.

I would like to read a part of that broadcast, because it contains the story of the Parrish cross burning which has not been heretofore mentioned in this hearing.

This is the script from the broadcast:

Ladies and gentlemen, I had a visitor today. Unfortunately, I was in Birmingham when my visitor arrived. I say "unfortunately" because I certainly would have liked to talk with him. The gentleman in my office to whom he talked did not get his name, but he did deliver his message. He is from Parrish.

The man said that he is a member of the Ku Klux Klan, and that he wanted to see me to say that the Klan had no part in my anonymous telephone call Tuesday morning, nor with the cross burning at Parrish. The man stated that the members of the Klan in that vicinity stored their uniforms and regalia a week ago, and hadn't used them since. He said that he was going from my office to see the Jasper chief of police and tell him the same thing.

When I got back to Jasper and got the message, I went to see Buddy Clark, the Jasper police chief. No such man had been to see him, or at least he said that he wasn't in if the man came.

From the police station I went to see Walker County Sheriff Grover B. Baggett. The men—evidently the same one, because our descriptions matched—had been to see him, but like myself, the sheriff was out at the time. He delivered his message to the people in the office, the same message.

Here's the story about the Parrish cross burning:

62936—50—ser. 18——14

A blazing cross was planted in the front yard of a modest Parrish, Walker County, home early Thursday morning and an occupant of the house said the burning of the cross "certainly was the work of the Ku Klux Klan."

It was reported that the fiery symbol of the hooded, robed order was set ablaze at the home of Mr. and Mrs. Robert Bickerton about 12:30 a. m. About an hour later, Mrs Bickerton said a man clad in a white robe entered a neighboring house.

Mrs. Bickerton declared she was sure the crudely constructed cross of pine slabs covered with gasoline-soaked rags was left by the Ku Klux Klan.

Parrish Chief of Police A. T. Tuggle stated he also believed the cross was burned by Klansmen as one of his officers, M. C. McClellan, spotted three carloads of men cruising "back and forth' 'through the small town situated 9 miles south of Jasper. Chief Tuggle stated the autos were seen about midnight.

I would like to add that I have been back to see Chief Tuggle since then. I went back Sunday, and he has changed his story. He has since stated that the cross was burned by three teen-age youngsters.

On Friday, June 23, I went back to the office of the Walker County sheriff, Grover B. Baggett, and requested a statement concerning the Parrish cross burning. The only statement he made was that "It was the work of a bunch of kids."

On Saturday, June 25, while I was in Atlanta, Ga., two telephone calls were received in my office from Mrs. Robert Bickerton, of Parrish, Ala. She requested that I come to see her as soon as I returned. I did.

On Sunday afternoon, June 26, at 4:30 p. m., I went to see Mrs. Bickerton as requested. She stated, first, that she had been misquoted in the Birmingham newspapers and also by myself both in the newspaper and on the radio. She said that she had never made a statement that the cross burning at her home was the work of the Ku Klux Klan. She told me that she had said that she believed it to be the work of a clan, c-l-a-n, but not the Ku Klux Klan. She said, "If I had thought it was the Ku Klux Klan, I would still be running."

Mrs. Bickerton stated that she had asked the Parrish chief of police, A. T. Tuggle, to come to see her. She said he came while the newspaper reporters and photographers were there, and she asked him to remain for a few minutes so that she might talk with him. Mrs. Bickerton said he left and did not come back.

Mrs. Bickerton also stated that she had requested action by officers from the Walker County sheriff's office. When the story appeared in the Birmingham Post on Friday, June 24, of a statement by Walker County Sheriff Grover B. Baggett that the cross burning had been done by a group of teen-age boys, Mrs. Bickerton stated that no representatives from the sheriff's office had been to see her prior to the publication of the story. She said that Sheriff Baggett personally had come to her house on Saturday, June 25, after the publication of the story, but had come only after her insistence to Mr. E. O. Roden, publisher of the Union News, that the sheriff or his representatives make the call.

She stated that the sheriff came to her house, sat on the front porch, asked her about the cross burning incident, did not investigate the premises, called on her next-door neighbor briefly, and left. She stated she had been advised that Parrish Police Chief A. T. Tuggle had obtained a confession from three teen-age boys of the cross burning, but he would not release their names. Incidentally, he would not release those names to me, either.

She stated she asked for their names because she wished to prosecute them, but Chief Tuggle answered her question by saying, "See your solicitor."

During my conversation with Mrs. Bickerton I advised her to contact County Solicitor Alton M. Blanton in Jasper. She had done that before I left Jasper yesterday.

Upon leaving Mrs. Bickerton's home I went to see Parrish Police Chief A. T. Tuggle. He verified Mrs. Bickerton's statement that three teen-age boys had confessed the cross burning to him, but he would not release their names.

Since that report has been written, gentlemen, I have talked and worked with the circuit court solicitor, Will Hunter, in Walker County, and with the Assistant Attorney General for the State of Alabama, Mr. Barden, and I have found out several things and have a list of names, but would prefer not to give them unless you especially want them.

Mr. BYRNE. No. We do not want any embarrassment.

Mr. TRAWICK. I would also like to say that one very informative and very enlightening bit of evidence has been uncovered, and I think you will hear about it in the Birmingham newspapers within the next week.

Mr. BYRNE. We are very thankful to you. You have made a very forthright, commendable, and highly independent statement.

Gentlemen, is there any cross-examination?

Mr. FRAZIER. You received a subpena to appear here, did you not?

Mr. TRAWICK. Yes, sir; I did; and I have it in my pocket if you would like to see it.

Mr. BYRNE. We have no intention of calling any other witness at this time. We have a resolution that we will ask Judge Jennings to read.

Mr. KEATING. Do you have any recommendations to make to this committee regarding either the civil-rights legislation or any antilynching bills which are before us?

Mr. TRAWICK. No, sir; no recommendations. But, being a newspaper editor, I have some opinions on that, if you will permit me to take a minute.

On this civil-rights legislation—that and giving aid or assistance in this mob violence—I would like to ask you to give us a chance to settle it at home. I think we can do it.

Mr. JENNINGS. You have made a very commendabe and intelligent witness.

Mr. TRAWICK. Thank you.

Mr. JENNINGS. There will be no enforcement of law, either Federal or State, unless public opinion and good citizens back it up.

Mr. TRAWICK. That is right.

Mr. KEATING. I want to commend you and your newspaper for the campaign you have conducted to try to stamp out violence down there.

Mr. TRAWICK. Thank you.

Mr. LANE. You are satisfied that the State officials can handle this matter?

Mr. TRAWICK. Yes, sir; I certainly am, if we just give them half a chance and the cooperation they deserve.

Mr. LANE. They are working on it day and night, you say?

Mr. TRAWICK. Yes.

Mr. FRAZIER. Are you satisfied with what the sheriff is doing in this county?

Mr. TRAWICK. No, sir; I am not.

Mr. KEATING. But you think the people of the locality will be aroused to elect to public office men who will do their duty if the ones in office do not do it, do you?

Mr. TRAWICK. Yes, sir. With a man in the sheriff's situation, I can see his point. He is pitifully understaffed, especially to cope with any activity such as the present one which has been prevalent in Walker County the last 3 weeks.

Mr. LANE. How much of a staff has he?

Mr. TRAWICK. I do not know exactly. I believe it varies from 12 to 15 deputies, and Walker County is a county of approximately 15,000 population.

Mr. JENNINGS. Would you say the great majority of the people down there object to these violations of law and are opposed to them?

Mr. TRAWICK. I certainly would, sir. I do believe that the people are all violently opposed to this mob violence, with the exception of an infinitesimal minority which constitutes the group.

Mr. JENNINGS. A bunch of lawbreakers?

Mr. TRAWICK. Yes, sir.

Mr. BYRNE. Who are conceited enough to believe they can handle things and nobody else can?

Mr. TRAWICK. Yes, sir.

Mr. BYRNE. That is correct, is it not?

Mr. TRAWICK. That is right.

Mr. BYRNE. Now Judge Jennings has a resolution to offer.

Mr. JENNINGS. I offer a resolution for the consideration of Subcommittee No. 3:

Be it resolved, That a subpena issue from this committee and be served on each of the witnesses Clarke Stallworth, Jr., Clancy Lake, and Paul Trawick to appear before and testify before Subcommittee No. 3 of the House Judiciary Committee on the issues pertaining to H. R 4682 and other pending House resolutions of similar import.

(The resolution was adopted.)

Mr. BYRNE. The resolution is unanimously adopted and made a part of the record, and the subpenas will be issued according to the resolution.

We have no further witnesses at this time, and we will adjourn to meet subject to the call of the Chair.

STATEMENT OF HON. CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BENNETT. My name is Charles E. Bennett. I am Congressman from the Second Congressional District of Florida.

I oppose the enactment of the proposed so-called antilynching bills for a variety of reasons. First of all, I think that the bills are unconstitutional as a violation of the tenth amendment of the Constitution. The Constitution would probably never have been enacted if it had not been for the inclusion of the tenth amendment which is part of the Bill of Rights. It provides that when governmental powers are not given specifically to the Federal Government, they shall remain with the people or the States into which these people may organize themselves or have organized themselves.

Along that same line, I oppose this type of legislation because I feel that it is projecting still further the Federal Government into local government which trend in government in late years I feel to be a mistake and a very dangerous mistake. When our country was founded, it was founded through experience. The colonists had experienced a remote governmental control and they desired to return to what they had experienced somewhat when they were in Europe which was more of a local control; plus that they desired to add to the grass-roots control that they anticipated being able to have in this country. In other words, they rebelled against being controlled remotely from England and they wanted to get even a heartier participation in local government than they found possible in England itself when they were actually living in that country or whatever country they happened to live in in Europe.

Their reasons for that were very very sound. They felt that local matters could be best controlled by local people and that government from afar was a dangerous procedure to enter upon. Also it may be borne in mind that the Constitution was more or less of a contract between various peoples. If it had not been for the provisions of the tenth amendment, it is very likely that our country would never have been founded. The first ten amendments were all necessary for the founding of our country and therefore play a part in the contractual obligations which still carry on down through the Constitution until the present difficulty, until such time as they shall be abridged by constitutional amendment.

No one would come here and take up for lynching, and I say that lynching should be a thing that we should not have. Certainly a person who engages in a lynching mob is a person who should have put upon his or her shoulders the responsibility of meeting a charge of crime and being convicted of it if guilty. The State laws, however, in every State of the Union are adequate to cover the question of lynching, and particularly they are in the South. We have murder laws in every State in the Union, and lynching is murder. A person can be and should be convicted of murder when he participates in a lynch job.

Mr. KEATING. Is there not a serious question, Mr. Bennett, whether or not those laws are being enforced?

Mr. BENNETT. I will get to that in just a minute, if I may.

The history of lynching is a very interesting one. Many people do not understand the background of what brought about lynchings. Of course, some lynchings occurred prior to the War Between the States. There were many lynchings after the War Between the States when the Federal Government, despite the provisions of the Federal Constitution, saw fit, by fire and sword, to force back into the Union the States which had decided and determined their desire to be out of the Union. When the Federal Government did that, it did not use the kindly hand of Abraham Lincoln, nor the somewhat faltering but kindly hand of Andrew Johnson, but the Senate and the House of Representatives ruled the South with an iron hand. They sent down people to control the government; they allowed and encouraged people to assume high office who were not capable of assuming those

offices. They overloked and countenanced great corruption which led to the demoralization of the Government.

With that picture before them, as heinous and as culpable as taking the life of another man is without a just and due trial, these people, some people in the South, at least, took upon themselves to try to gain some sort of order and some sort of government since the constituted government offered them no protection. Therefore, in the early days, there were reasons why lynchings were indulged in and reasons why many good people at least overlooked them.

As the years have gone on, however, and the South has at last been able to reign through its own government, through its own State governments as provided for in the Constitution in State matters, and has gained control of its courts again, there is now no justification for such mob violence, if there ever was any such justification.

The South deplores lynchings more than any other section of the country. There is nothing that makes a southerner more unhappy and more depressed than the occurence of a lynching—that is, the average southerner. There are people in our midst—I may say a great many of them, in my opinion, are not true southerners, either by having lived in the South for long or being consistent with the southern principles—who do engage in mob violence occasionally.

The incidence of lynchings has fallen off so tremendously in a period of years that I am sure these figures have been brought out to you or will be brought out to you by other witnesses before you. Only a few years back there were quite a few lynchings. In 1898 there were 255 lynchings. Of those, 100 were white. The only lynchings that have ever occurred in any community where I have lived have been lynchings of white men. I think there have been two. But the incidence of lynchings of white people has decreased along with the lynchings of colored people until, at the present time, for the last 10 years, I do not believe there has been a single year where there have been more than six lynchings in the entire country. Last year I think there was one lynching. In 1949, just closed, I have heard that there were three lynchings announced.

You must also investigate the type of lynchings which were referred to or what is defined as a "lynching," because nowadays if two people shoot somebody else and they happen to be of a different race, they consider it a lynching, which is, of course, quite different from the lynchings that most people read about when they they read about the situation in the South. In other words, some lynchings which are called lynchings are truly nothing, completely nothing but ordinary types of murder. There is no mob violence in it. Somebody shoots somebody else and they happen to be of another race.

Now that sort of thing occurs in the North as well as the South. I think in the last few years, when I have been trying to read the newspaper on this subject, as I have tried to read the newapers on this subject, I have found about as many incidents pointed out in the North as there are in the South on the racial basis, about as many white people killing colored people under circumstances which, in the South would be called lynchings, because that is the popular propaganda way to refer to them when they occur in the South. When they occur in the North, they are "murders."

Mr. KEATING. Of course, Federal law would apply to not only the North but also the South.

Mr. BENNETT. I will try not to talk too long. Then I will yield myself to any questions that anybody would like to ask.

Now, I feel, therefore, that not only is this law unconstitutional, but I feel furthermore that the incidence of lynching has been so greatly on the decline that presently it is almost like the dodo bird, something entirely out of the practical realm of modern-day activity. And the few cases that do occur, most of them are not what most people think about when they think of lynchings. They are just murder.

Since the incidence is so slight, and since the law, therefore, would have such a small coverage as far as the actual number of crimes that would be involved, let us think a little bit more about what would be the value and what would be the difficulties about any such law. I am going to illustrate a little bit out of my own experience.

I have a little difficulty as an individual in getting about physically and I have a little difficulty when I drive a car. But now if the Government was to tell me that since I do have a little difficulty driving a car, even with the hand controls which I have, that they were going to put a State policeman with me or a Federal officer to see that I drove that car accurately, it would certainly be a considerable blow to my personal pride. Everybody always talks about southern pride when they talk about legislation of this kind. As a matter of fact, there is some southern pride in it, but here is where the pride lays: The southern pride consists of the fact that our pride is injured when lynchings do occur. That is one place where our southern pride is hurt. It hurts us a great deal. There is no popular support for lynchings in the South at all. If they could be apprehended, they would get quick and short justice.

The Federal Government now proposes to say that the State governments are not sufficient and the Federal Government should come along and lend a helping hand. The ways in which this tender of assistance is offered is important with regard to the reaction that people will have to this legislation. Southern pride is hurt because the South believes it can take care of its own government. It resents the implication that the South is not able to handle its own affairs. It resents the propaganda which is given out with regard to lynching. I remember when I was overseas in New Guinea I read in Time magazine, I believe it was, that there was about 100 lynchings a year on the average. It came back with an apology in a footnote in a letter to the editor saying that there were only three during the average years to which it had been referring. But that is typical of the sort of propaganda that is issued.

We in Congress have a responsibility to look at the facts. We are here to be statesmen, not politicians. When you approach this question with regard to the South, what you are really interested in is trying to decrease the number of lynchings, I think it is quite probable that the enactment of a law of this kind will not decrease the incidence of lynching—it might increase the incidence of lynching because it will be a slap at a person. Just like a crippled person—if you tell him he has to have somebody to look after him there, he is going to resent it and he is perhaps going to take chances he should not take in driving a car, or something of that kind. In other words, the injury which is coming to the southern pride with regard to lynching is first the fact that it does exist, even though in a small number of cases, and

second, that we resent antilynching laws because they imply that we are not able to control our own affairs.

We think we can control our affairs pretty well. We certainly think we handle the matters with regard to race relationships much better than the rest of the country, and if I got into that, I would be here all afternoon; but I would like to quickly point out to you some facts with regard to race relations. The great race riots which occur in the country do not occur in the South. The one in Detroit a few years back saw 25 Negroes killed. It has been years and years and years since 25—I do not think there has been any time when 25 Negroes were killed in a race riot in the South, certainly not for many years.

In Harlem, 5 Negroes were killed and 561 persons hospitalized. In this Detroit one, to which I referred, there were 250 white people injured and 211 Negroes, in addition to the 25 Negroes which I referred to as being killed.

Now, we do not feel in the South that the country is looking at this through clear eyes. We feel that there has been a great deal of propaganda and that the propaganda has been designed at splitting the Nation, has been designed as bringing out ill will between both sections of the country.

There are ways of helping the Negro. There are many ways of helping the Negro. But the practical things that can be done to help the Negro I get very little assistance on when I am here. My first proposal was a bill to provide for construction of Negro schools with Federal aid over a 10-year period. The first speech I made on the floor of the House—I am a freshman Congressman—the first speech I made on the floor of the House was in behalf of that bill. I have so far been unable to get a hearing on the bill or get any serious consideration of its provisions. It is the best bill, in my opinion, that can be offered in the field of Federal aid today. It helps the people that need the most help.

Mr. KEATING. Have you had the matter up with the committee of which Mr. Lesinski is chairman?

Mr. BENNETT. Yes, sir; I repeatedly requested hearings on the matter, not only to him but to other members of the committee. I cannot even get hearings on the matter. That is not the only thing that is this way. When we approach these questions, we do not approach the questions enough from the standpoint of what is good government. We approach them too much from the standpoint of what is good politics. Maybe the country only has to think about one section of the country. Maybe it wants to forget about one-third of the Nation which it took over by fire and sword, despite the fact that we did not at that time want to be in the Union.

In my opinion, it is contrary to the Constitution. I do not think that if they had ever tried Jeff Davis they would have found him guilty of treason. It was by fire and sword that they forced the States to come back.

No Marshall plan was ever offered to the Southern States, and I have never asked for a Marshall plan for the South. But it does seem to me that a country which was founded by a solemn pact which provided that slavery could exist, and even provided that there should be importation of slaves until 1808, had no business abolishing that institution which was part of the Constitution, as bad as that provision was. What business had they, as a matter of contractual obligation, abolishing an institution without making any recommendation to compensate anybody? That is a thing under the bridge, you may say, but it is not a thing under the bridge when it relates to the colored people. They are the only interest here today: What is to their advantage? No Marshall plan has ever been asked for for the South, but I do think that the country has a responsibility to help the colored people of the South. The southern people spend more per capita on their educational outlay, as relates to their incomes, than any other section of the country.

Mr. KEATING. Certain of the States, not all of them.

Mr. BENNETT. I think most of them do. Certainly mine does, and I do not know any that do not. Which one does not?

Mr. KEATING. If you consider Texas part of the South, I am informed that Texas does not pay as much per capita as many Northern States.

Mr. BENNETT. I certainly think that they pay a greater percentage of their income, their taxable wealth, proportionately, than do the rest of the United States. Is that not so? Do you know of an instance to the contrary?

Mr. KEATING. I do not want to get into details of it because it is not before us. We are not considering Federal aid to education. As you know, the forum for that is the Labor and Education Committee.

Mr. BENNETT. I think we ought to discuss what would be good for the colored people of the South, and I want to try to help them. I realized I digressed a good deal from the subject, so I will say, then, in approaching this question, we should approach the question from the standpoint of what can best be done to help, to alleviate the situation as it now exists.

Now I think that if the Federal Government could offer its assistance with the FBI or other facilities, it might have on the request of the governor or some sheriff for the apprehension of these people, I think it would be a good thing if such an opportunity were available to people that do not have the financial wherewithal, perhaps, to have all the methods of tracking people down and apprehending them. I think that if such assistance were offered, that it would be called upon in every instance where such occasion occurred. I cannot conceive of a governor of a State that had a lynching occur within his boundaries today in the South that would not jump at the opportunity, if he felt his own facilities were not adequate, to call upon the FBI for assistance. But this is different from the Federal Government declaring this to be a Federal crime. That violates the theory of our Government, which is quite important, particularly when you are approaching a little tiny thing which percentagewise rates so small in the over-all picture of crime. For instance, in 1948, there were 13,000 murders, 12,000 rapes, 1,500,000 other felonies, and there were only, I think, that year 5 lynchings. That was one of the higher years in the last 10 years. So when you approach this question, you must realize you are approaching a tiny little thing as far as the incidence is concerned, which has been wiped out very largely by the South itself, by public pressure in the South itself, not brought on by anybody else, but by the fact that the people just do not want it.

You must bear in mind the fact that you are making further en-

croachments from the standpoint of the Federal Government on the State level. You are telling them now that they cannot even regulate their own police affairs which have always been conceived to be part and parcel of the State governments to regulate for themselves. You are insulting the South because you are implying that this crime is greater in incidence, which it obviously is not. It has been handled very well, and there are other culpable crimes which are much more numerous.

I think that the approach here is wrong. I think the Federal Government ought to approach State problems when it approaches them with the helping hand, not a kick in the pants. Even though it may be politically helpful to someone to use the kick-in-the-pants approach, it would be a much better approach if we approached it from the standpoint of trying to help and allowing the facilities to be available if they were called upon.

That sums up my opposition to antilynching legislation now before Congress. If anybody wants to ask me questions, I would be delighted to answer.

Mr. BYRNE. Mr. Bennett, have you read the letter that was issued by the Tuskegee Institute dated December 29, 1949, for release December 31, 1949, relative to its findings regarding lynching?

Mr. BENNETT. I have not read the letter.

Mr. BYRNE. I am going to put the letter in the record at this point because it would be pertinent to this type of cross-examination that is going to be made of you, perhaps, by some of the members.

(The letter referred to is as follows:)

TUSKEGEE INSTITUTE,
Tuskegee Institute, Ala., December 29, 1949.

DEAR SIR: I send you the following information concerning lynching for the year 1949.

Number of lynchings: According to records compiled in the department of records and research, Tuskegee Institute, I find that three persons were lynched during the year. This is one more than the number two for 1948; two more than the number one for 1947 three less than the number six for 1946; and two more than the number one for 1945. Thus, for the 5-year period, 1945–49, inclusive, 13 lynchings have been recorded.

One of the victims was Caleb Hill, Jr., 28-year-old Negro chalk-mine worker of Irwinton, Wilkinson County, Ga., charged with creating a disturbance and resisting arrest. Lodged in jail, he was removed by a group of men, beaten and shot to death.

The second victim was Malcolm Wright, 45-year-old Negro tenant farmer of near Houston, Chickasaw County, Miss., who is reported to have "hogged the road" and of not moving his wagon over fast enough to permit a group of white men, riding in a motorcar, to pass. He was beaten to death.

The third victim was Hollis Riles, 53-year-old prosperous Negro landowner of near Bainbridge, Decatur County, Ga., found dead with a number of bullet holes in his body after an argument with a group of white men, who had been fishing in his pond without permission. It was reported that sometime previously Riles' home had been riddled with buckshots fired from an automobile.

The States in which the lynchings occurred and the number in each State are as follows: Georgia, two; Mississippi, one.

Punishment of lynchers: Two men jailed in connection with the lynching of Caleb Hill, Jr., were later freed for lack of sufficient evidence to bring them to trial.

Lynchings prevented: In at least 14 instances, lynchings were prevented—4 in the North and 10 in the South. One person escaped from a group of men bent on lynching him by jumping into a river; in the 13 other instances, officers of the law gave protection. A total of at least 17 persons were thus saved from mob violence. Of these, 6 were white persons and 11 were Negroes.

Although there are three clear-cut cases of lynching reported for 1949 according to criteria now used, attention should be called to other killings which according to all intent and purpose would seem to fall into this category. These include murders reported as being committed by less than three persons; killings by specially deputized posses, who in some instances appear to be composed of irresponsible persons bent not on upholding legal institutions but on vengeance; prisoners meeting violent death in jails after confinement; and other cases of police brutality.

Very truly yours,

F. D. PATTERSON, *President.*

Mr. BENNETT. I have heard it said that the number was three.

Mr. BYRNE. Exactly.

Mr. BENNETT. Have you investigated those cases and read what was said about them, that if not all of them, most of them were cases in which only one or two were involved?

Mr. BYRNE. I think that is correct.

The witness is open to cross-examination by anyone who desires to examine him.

Mr. LANE. May I ask the Congressman a question?

Mr. BYRNE. Yes.

Mr. LANE. Mr. Bennett, have you got the figures of the lynchings since 1945? I have before me a report dated March 23, 1948, by Mr. Case of New Jersey, from this committee, which report is No. 1597 of the Eightieth Congress, second session, and it has a list here from 1921 down to 1945 of the numbers of lynchings. But it has not got anything since 1945 to the present time. Have you got those figures?

Mr. BENNETT. I do not have any figures other than the ones I gave you. In 1949, three occurred, according to Tuskegee Institute, and I challenge that those are lynchings in anybody's ordinary comprehension.

Mr. LANE. Possibly one of them might be.

Mr. BENNETT. That is what the situation is—might be.

Mr. FRAZIER. The other two were what we consider murder?

Mr. LANE. In 1948?

Mr. BENNETT. One.

Mr. LANE. In 1949, possibly three?

Mr. BENNETT. Yes, sir.

Mr. LANE. But 1946 and 1947 you haven't got?

Mr. BENNETT. I do not have that, sir.

That falls from the level of 1898 of 255. I have that figure. But then I have it down that in 1920 there were 64. It has been on very much of a decline and the question arises in my mind: Is it a wise thing to upset the public pressure which is now very heavily in the South and has been accumulating over a period of years, as I referred to here—is it a wise thing to upset that trend as you might well do? People do not like to be told what to do and they do not like to have Federal agents snooping around. We have a lot of places in our district that do not like Federal agents.

Mr. DENTON. Do you have any record of the number of convictions for lynchings?

Mr. BENNETT. No, sir; I do not know. But I know of my personal knowledge with regard to crimes with regard to white and colored people. I myself was defense attorney, appointed by the court, to defend a white man for raping a colored girl and the man is now serving—my only criminal trial—he is now serving a life term in the State penitentiary.

Mr. KEATING. That is exactly parallel with my record in the criminal law practice.

Mr. BENNETT. When anybody came to me after that and asked me to take a criminal case, I told them I only had one criminal case in my practice and he is now serving a life term.

Mr. BYRNE. That put you out of that field.

Mr. BENNETT. But there have been others there. There was, if my memory serves me correctly. I know about one from first-hand information.

Mr. LANE. Your man could have done worse. He could have gone to the chair.

Mr. BENNETT. Yes. Is that meant to imply that that person would not have gone to the chair? Many colored men guilty of raping white women have not gone to the chair. If your question is supposed to indicate that there was a difference of justice——

Mr. KEATING. He was simply indicating his compliment to your legal ability.

Mr. LANE. Maybe you got a break.

Mr. KEATING. It is different in this respect: The life imprisonment was the limit that my client could have gotten.

Mr. BENNETT. I bow to you in that and in a congressional capacity.

Mr. KEATING. Do you think, Mr. Bennett, that if legislation were enacted to permit local law enforcement authorities to call on the FBI that they would take advantage of that in such cases?

Mr. BENNETT. I definitely do. I do not know of a southern Governor at the present time or any that is likely to be elected in the future who would not call on the FBI for assistance if their local authorities were not sufficient. In some States and in some localities they do have strong law enforcement. In other places, they do not.

Mr. KEATING. In those where you say they do not, they are reluctant to admit they do not, are they not?

Mr. BENNETT. I think in all the States, if you put it up to the Governor of any State, he would not want to see people guilty of lynching go free. I think he would want to see them convicted and he would want to do everything he could.

Mr. KEATING. Even though the local law enforcement officials might have a pride which would prevent them from calling on the FBI; but if it were put up to the Governor, he would do so?

Mr. BENNETT. Of course, we are getting a little bit conjectural about personalities, but I do know of sections where they are pretty remote from a lot of things which we enjoy in our every-day life and the problems are different in some of those places.

Mr. KEATING. Even if you thought they do not have qualified men, he would hesitate to make it a matter of record that that was the case?

Mr. BENNETT. All the men I know are quite qualified. I am not trying to smooth anything over here. We have had some pretty inflammatory situations since I have been home from the war. There have been some awful situations that have occurred. In my town there have been horrible rapes of white women by colored men, one brutal murder. Those things are quite obviously inflammatory and they become more inflammatory when you have a great number of uneducated colored people and a small percentage of white people living in the area. You have a situation which may be a little hard

to comprehend for some people. In some areas in my district, I suspect they have a majority of colored people, and in those areas, they are usually quite rural and the colored people are not well educated and the white people are disturbed at times when things like that occur. It is quite natural that they would be.

I do not know of any of those white people in the most rural areas, even when they are overpopulated by colored people, that do not want the law of justice and courts to take place. I do not know of anybody that does not feel that way.

Mr. KEATING. There are cases that have been brought to Nation-wide attention where in my judgment, at least, local law enforcement officials have not taken the action which might be properly expected of them. You may disagree with that.

Mr. BENNETT. I certainly do.

Mr. KEATING. But I do believe firmly that there are such cases.

Mr. BENNETT. There may be such cases, but every one I have had a chance to look into was written with red ink, written by people who wanted to destroy the South and wanted to create fomentation between the North and the South in this country and wanted to serve the communistic cause. When you get to look at the facts, you find different situations.

Mr. KEATING. I do not believe all the reporters in the South are Communists.

Mr. BENNETT. The reporters——

Mr. KEATING. That does not get very far with me as an argument. Have you introduced, or has anyone else introduced a bill permitting the FBI to be called in on such instances, if you feel that is the proper procedure for us.

Mr. BENNETT. I do not know that it is necessary for anything to be done because I personally think the incidence of this is so slight that it is not required that anything be done.

Mr. KEATING. Do you not know the principal objection to this proposed legislation is that the FBI would be called into these cases?

Mr. BENNETT. Who says so?

Mr. KEATING. Do you not know that that would be one of the first arguments presented?

Mr. BENNETT. I do not know that to be the fact. In fact, I think it is a categorical misstatement.

Mr. RANKIN. What about when you kill them in Harlem by the dozen? Do you call the FBI in?

Mr. KEATING. I would not have any objection to the FBI being called in in such cases under any circumstances.

Mr. RANKIN. You seem to be in a terrible fog in your statement about the South. It is ridiculous.

Mr. KEATING. I am not making any statement about the South.

Mr. RANKIN. You are talking about the news that comes out of the South. You say it does not any more reflect what happens there——

Mr. KEATING. I do not believe the gentleman is accurate, the gentleman now addressing me, when he alleges I said all the reporters in the country that send us messages from the South are Communists.

Mr. RANKIN. Nobody made such a charge, but the stuff that you have been reading, the propaganda that you have been reading, has been put out for the purpose of maligning the South.

Mr. BENNETT. I have, I assume, a privilege since the statement was made a minute ago there by my colleague, a very capable colleague, of trying to correct the record somewhat. If the committee got the impression that I meant to imply that all stories which emanate from the South and are critical of the handling of lynchings emanate from Communists, I certainly meant to make no such statement; and if I made a statement that all these reports are written by Communists, I hereby retract it—but I don't think I said it. I did say that I felt that this country has been flooded with propaganda with regard to the South that is so remote from the facts that it is hard to recognize it when you actually are faced with it. And I do say that I feel that these reporters who are getting that information out—and I do not think they are southern reporters because I do not think a southern man would do that even to get the money—I do feel that their activity in painting the South in improper colors is very helpful to the Communist cause. I suspect—I do not have any factual foundation to say that this is true—but I suspect that some of them are actually in the pay of the Russian Government or at least are people who are carried away with their desire to help Russia, like Judith Coplon apparently was, through misguided idealism, if you can call it idealism. They think it is to the best interests of the world, whatever is going to happen hereafter, to destroy America by pitting one side against the other.

When you look at the cool facts of how many lynchings there are, you find that there are practically none. When you look into the circumstances that I happen to know about these race difficulties, I find out you cannot even recognize the story. In other words, I know what the circumstances are. I know the people involved in them. I know what the circumstances are and yet when I read about it in the New York paper or somewhere up here, it is entirely distorted.

Incidentally, since I have been here in Congress, I found the same thing is true about many other things. I found out there is a good deal of distortion about a lot of things in the public press about some labor matters, about some matters dealing with veterans.

Mr. KEATING. I cannot quarrel with that; I cannot quarrel with the gentleman that there is a lot of distortion.

Mr. BENNETT. I thought it was just about the South when I came up here, but I see now that it is on a lot of other things: On veterans, on labor, and a number of other things. There are many things that get into the press or over the radio because of the fact that it is their business generally to paint an interesting story. In other words, it is to their advantage to build up a peak in hysteria, you might say, to get people agitated. It is destructive of our best interests to have that happen, from the standpoint of national security.

Mr. DENTON. Let me ask you about one statement. Here is a report that says during the decade from 1938 to 1947, at least 41 persons were lynched. The majority of guilty persons were not even prosecuted. No one received the death penalty. Obviously, it is still possible in certain areas to seize and kill a person in certain areas with certain assurance that they will not be brought to justice.

Mr. BENNETT. That is an average of four a year. When you have 13,000 murders and 12,000 rapes in a year——

Mr. DENTON. The difference is that they are prosecuted for murder and they are prosecuted for rape but nobody has ever been prosecuted and convicted for lynching.

Mr. BENNETT. I do not know that the percentage is very much different. A lot of people that commit murder and rape are not tried for murder and rape.

Mr. DENTON. We had one case about which we were advised when the proponents were here. I noticed they all said that if they handled it themselves, they could do, they could take care of the matter. Everybody ever tried, they found not guilty in every case.

Mr. BENNETT. That is another thing because the newspapers paint it as if the man should be guilty. That is what they did last year. They painted it as if the sheriff down there was running around clubbing these people, whereas he did everything that he could do to save the colored people from any trouble at all. He even went to the extent of moving them out in automobiles so if there were race troubles nobody would get hurt. He leaned over backward to be kind.

Mr. DENTON. Out of 14 lynchings, somebody is guilty, if these reports are right. Yet nobody has been convicted.

Mr. BENNETT. Well, I certainly think that people ought to be convicted for committing lynchings and I think if they have not been in the past, they will be in the future.

Mr. DENTON. Is that not the whole difficulty, that they do not convict for lynchings?

Mr. BENNETT. How is this going to do any better? How is the Federal Government coming down there going to do better? Who is going to try these people? Are you going to ship down a bunch of people from Brooklyn to be the jury?

Mr. DENTON. Of course you have a local jury. I am just——

Mr. BENNETT. How are you making it any different?

Mr. DENTON. When I was a boy, I had mob violence in my town. It is pretty hard to try those people in that community. The State has a bigger drawing power for juries, bigger district for the government, than that one local county.

Mr. BENNETT. What do you propose to do? I want to ask you concretely. There is nothing in there that would allow you to ship juries down, is there?

Mr. DENTON. You would try them in a district court, United States district court, which covers a much larger territory than one county.

Mr. BENNETT. The South is a pretty big area, is it not?

Mr. DENTON. Your Federal judicial district would cover a number of counties.

Mr. KEATING. Mr. Denton's point, as I understand it, is that in a Federal district court, your jury would be drawn from an area beyond the one where the particular act of violence occurred and it might result in a more dispassionate view.

Mr. BENNETT. You can change venue. It is often done in the State court so that you will get a fair trial, particularly in these inflammatory cases. They can do that now. In fact, I suspect that most of them are done that way now.

Mr. DENTON. If the defendant can take a chance, can the State take a chance?

Mr. BENNETT. I do not know, but generally they do have another venue. I think that has been the general practice.

Mr. KEATING. In New York State, the State cannot ask for a change of venue.

Mr. BENNETT. What difference does it make if you have another venue?

Mr. DENTON. It makes this difference——

Mr. BENNETT. The defendant certainly ought to be the guy that is interested. If he does not think he can get a fair trial in the next county, and he does remove to another county, what could be fairer than that?

Mr. KEATING. Mr. Denton's point, as I understand it, is that it is difficult to convict a person who is obviously guilty because the feeling in that particular community is so strong in favor of the guilty party that he is unable to find a jury which will convict him, whereas if the case were tried in a Federal court with the jury drawn from a wider area, there might be a better opportunity to see that justice was done.

Mr. BENNETT. I understand it better now. I am not trying to take up for lynching. I think lynching is a horrible thing but I think the public sentiment in the South is very much against lynching and I am not suggesting that juries in the South, whether they be Federal or whether they be local juries, are going to do injustice and turn people loose. I am not suggesting that at all. I was sort of rebutting that you were going to get some different kind of arrangement. Outside of the fact that you might be able to get a broader base for your jury, I do not see very much difference.

I think the juries in the South are just as honest——

Mr. BYRNE. Mr. Bennett, I think we have well discussed that question now. That is, I think we will not discuss that any further for the purposes of time.

Is there anything else now that anyone wants to ask Mr. Bennett?

Mr. FRAZIER. Is it not a fact, Mr. Bennett, that in the South there have been a great many cases tried in the Federal courts for violation of civil rights and things of that sort, in which there was no conviction?

Mr. BENNETT. I think there have been.

Mr. FRAZIER. My analysis is that if you had an antilynching law on the statute books that gave jurisdiction to the Federal courts, that the results would be somewhat similar to cases that were tried in Georgia and in other places in which defendants were acquitted, although tried by a Federal judge, prosecuted by a district attorney, and were acquitted in the South. Do you think there would be any difference if it was tried in a Federal court under a statute passed by Congress giving that court jurisdiction, other than the jurisdiction they now have?

Mr. BENNETT. I do not think there would be any material difference at all. I do not want to imply, however, that I think the people are erroneously letting them go free when they are charged because, as I say, the thing is so distorted in the press that you never know. If you are trying people by the press, you would be in a horrible situation. I am not condemning the press, but on the question of the South, they want to paint the blackest picture they can paint because that is good news.

Mr. FRAZIER. How many lynchings have occurred in Florida in the last 10 years?

Mr. BENNETT. I do not think anybody has died in Florida as a result of lynching in Florida for a long, long time. I personally have no recollection of anybody being killed. I can recollect as a young boy that there was a white man that murdered his family; that created quite a mob, but I don't think they finally killed him. I think the sheriff was able to spirit him away. The whole city was in a turmoil, a lot of shooting going on; but I think they spirited him away to a place where he could get a trial. If they had not taken him from the jail, he probably would have been killed.

Mr. BYRNE. If there are no further questions, thank you, Mr. Bennett.

We will hear next from Mr. Tackett of Arkansas.

STATEMENT OF HON. BOYD TACKETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. TACKETT. I wish to appear, Mr. Chairman, in opposition to the antilynching bills. I presume that is the only matter you have under discussion at this time.

I have had considerable experience in the State of Arkansas prosecuting and defending criminal cases, and I can truthfully say and can prove it without any fear of contradiction, that there have been more white people lynched during my life in the State of Arkansas than there have been Negroes. During my life of 38 years, I recall four white people being lynched in my home county and I believe that there has been one Negro lynched in those 38 years in the State of Arkansas.

Mr. FRAZIER. Was that in the entire State?

Mr. TACKETT. That was within the entire State. If I am in error about that, it was something that happened back when I was a child and do not recall it. But I do recall that four men, four white men, were lynched in my home county because they killed an old peddler. They were burned in jail. Of course, the northern newspapers did not carry that story. I honestly believe that you call homicide in the North murder. And you call homicide in the South lynching. There are more unsolved homicide cases in any eastern or northern city than there is in the whole of the south United States.

There are more unsolved murder cases that would be called lynchings in the South in any city that you can name—Detroit, Chicago, New York, or any of the other large cities in the East and North than the whole of the South. But they are called murders in the North, and unsolved murders; in the South they would have been called lynchings that were unsolved because the officers did not want to solve them.

As prosecuting attorney, there was one rape case in my district wherein a white man had raped a Negro. Had that been a case of a white person raping a white person, it would have been called a lesser crime than rape. It would actually have been called carnal abuse because the Negro girl gave her consent but she was under 16 years of age. Knowing of the ever-anxious critics of North and East, I prosecuted that man for rape, and he got the penalty of life in the State penitentiary and is serving there today. While I was serving as prosecuting attorney, there was one killing wherein a white man killed

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a Negro. And I prosecuted him to the very fullest extent of the law.

In the South, Negroes get along a lot better in criminal cases in their efforts to defend their just claims than the white people do. I recall a case, and you will find it here in your United States Supreme Court reports right now, where there was a Negro school teacher by the name of Harraway operating one of the largest schools in Howard County, Ark., and was getting Government assistance for hot-lunch programs. He was stealing those commodities and selling them to other school teachers and to the people throughout the country; stealing them from the little boys and girls, the little colored boys and girls there that should have been enjoying that food. When I prosecuted him, this worthy organization, an eastern organization known as the some kind of an organization to take care of the colored people caused that case to be tried two times in the Arkansas Supreme Court and once in the United States Supreme Court, trying to protect that man that was mistreating their own people.

In the South, when any Negro is charged with any kind of a crime, as prosecuting attorney I was always faced with the assistance on behalf of the defendant of every lawyer that the colored organization of the East could hire. They received free defense for their crimes in the South while the white people have to pay for theirs or get an attorney appointed by the court.

Lynching! I can't see where there is any justification for the United States Government to take over the just rights of the respective States. Our forefathers, when preparing the Constitution and deciding whether or not it should be adopted, were afraid of one thing. You will recall that the little State of Rhode Island was the last of the colonies to adopt or ratify the Constitution. They were afraid of just exactly what is happening today. They were afraid the Federal Government would eventually swallow up the rights of States and abolishing State lines.

Now, if the Federal Government is to go into the South—and that is all in the world that this bill is for—and disturb our rights and our duties when we are getting along so well down there, I think that it is wrong, just as wrong as if you were to pass a piece of legislation up here that allowed us southern people to come up here and meddle with your business.

I believe that my record as prosecuting attorney down there in the State of Arkansas should be sufficient to show that I am against discrimination. I do not believe in the white people mistreating the colored people, and it is not going on in my State, and I live just as deep in the South as any person in this Congress. We have made a lot of advancement down there. You will have to remember that the Negroes were slaves approximately 90 years ago. They have come a long way. If the white people will leave them alone, they will do well. If we quit meddling in their affairs and trying to bring dissension between the white people and the colored, they are going to advance in life. But every time this Congress meets up here and uses some of this political demagoguery, to stir up the feeling between the white and the colored people, they are not doing but one thing, and that is holding back the colored people within my section. All in the world that the East and the North has done is given the Negro a chance to ride in a streetcar and make him think that he has gained something

wonderful. Down in the South, we don't put the Negro in the back seat of the car but feel free to ride with them up and down the streets in the front seat. They are free to come into our homes; have more access to our white homes in the South than they have to white homes in the North.

Just a few days ago I got a letter from a boy, a colored boy, that I had known all my life stating he wanted a lot of information about the possibilities in Congress for the FEPC and the civil rights program. He was disgusted with the whole thing because he lives now in Detroit and he sees that all the things that he has been hearing about were untrue; that they do not give the Negro any more in the North and they do not give them half as much as they do in the South. I venture to tell some of these Congressmen that have been visiting in Europe that if they will go down in the South and visit just a little while, they will be ashamed of the treatment that they have been giving the Negroes in the North and in the East. Negroes down there are the friend of the white people. They have stayed with him even during the Civil War; they will continue to stay with him under any law that you care to pass here. It is not going to help the situation one bit in the world.

You say that you want to turn this thing over to the Federal district court because they can get a wider variety of jury. Well, we have got two district courts in Arkansas. The people throughout my State have just about the same mode of thinking as they do in any one particular section. For you to try a person in the Western District Court of Arkansas, or in the Eastern District Court of Arkansas, or in the county court or the circuit court of any county in that State, would bring about the same results. You have got to first contend that the people in the South are mistreating the Negroes before you can afford to bring about Federal legislation to overthrow everything that has thus far been accomplished in the South.

I am saying to you, and I can prove it, and I wish to again restate it, that there are more unsolved lynchings in the North and the East—in any one of the cities—than there are throughout the entire South, and while the people may be thinking because they happen to live in the East and in the North that they are being of assistance to the colored people of the South, I just ask you to take a visit down there and talk to the colored people, not the white people, and ask them whether or not they want this tomfoolishness or whether they want to be left alone and given a chance to advance in life without the Federal Government making people do something that they are not going to be happy about.

Mr. BYRNE. Thank you, Mr. Tackett.

Are there any questions that anyone wishes to ask Mr. Tackett?

(No response.)

Mr. BYRNE. Thank you, sir.

STATEMENT OF HON. JOHN E. RANKIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. RANKIN. Mr. Chairman, I did not know until a few moments ago that this hearing on this so-called antilynching bill was going on. Somebody called my office and asked if I wanted to be heard.

I do not know what the penalties are provided in these measures. You have several bills here. Now, if this is just an attempt to harass the white people of the Southern States, by stirring up race friction, it is absolutely nonsense to proceed further.

One of the bills you had here provided that the county should pay $10,000 or $20,000 damages wherever a person was unlawfully put to death in that county. I do not know whether that provision is in these bills, or not. You know, if that had been the law, one race riot would have cost one county in Illinois in 1920 around $40,000,000. They killed more Negroes in one race riot in Springfield, Ill.—Abraham Lincoln's home town—than have been killed in Mississippi in the last 40 years.

Mr. KEATING. No one from Illinois has appeared in opposition to any of these measures.

Mr. RANKIN. I am not talking about where they are from. I am talking about what happened. I saw in the paper some time ago that 65 percent of the prisoners in the penitentiary in New York were Negroes. Is that true?

Mr. KEATING. I am not an expert in——

Mr. RANKIN. That is your State. While you are trying to stir up trouble for the rest of the country, you ought to look into your own affairs.

I want to show you what is going on in the Southern States. The Negroes were taken there by northern slave traders. The South tried to prohibit the slave trade in the Constitutional Convention; but were outvoted. The people from the States that sold us the Negroes have been the most vehement in their denunciation of the South, especially the ones from States that profited by the slave traffic.

The Civil War is over and the Negroes are freed, and we are glad of it. I have no apology for the old slaveholders of the South, one of whom was my great-grandfather. I remember long after his death his old Negroes lived all over my county. I remember many years ago, before I came to Congress, when I was prosecuting attorney, a group of those old Negroes came to see me, and they got telling what a great man my grandfather was—great-grandfather. They said, "You know, when we got old in them days, they took care of us. Now we are old and ain't got nothing, and there is nowhere for us to go but to the poorhouse."

Well, after the War Between the States they were turned loose, and we had a carpetbag administration. That was something that practically everybody in every State in the Union has been ashamed of ever since. We survived that ordeal, and the Negroes have lived among us and enjoyed more peace, more happiness, more prosperity, more protection, and more security than they are in the State of New York or ever have or ever will, or anywhere else in the world that the Negro has ever come in contact with the white man. This applies to Indiana and Illinois also.

Mr. KEATING. Probably Massachusetts also.

Mr. RANKIN. You see where the judge in New Jersey threw those Communist lawyers from Washington out because they are being financed by the Communist Party to go up there and stir up trouble where they were trying some Negroes for robbing and killing a man.

Now, let us see what this is going to mean. If you are going to apply that kind of a penalty, it is like the gentleman from Florida said here, you had just as well try a man in Monroe County in the State court as to try him in Monroe County in the Federal court. That is where the Federal court sits.

I do not have the exact condition that these gentlemen have described. My counties have not only splendid roads but 90 percent of the homes in that district are electrified with cheap electricity. If you got your electricity in New York at the same rate that those whites and Negroes down in my district do, you would save $300,000,000 a year that you are paying through the nose to the Power Trust in that State.

When we electrified those communities, we electrified the Negro homes. Some of them own land. Many of them do not. But what are you doing? There is your beginning [indicating]. See that? "The Negroes in Soviet America." That is a Communist booklet. That was distributed all over the country. And that is the gang that has been stirring up, or trying to stir up trouble and misrepresent the white people of the South. This is a map of a Negro Soviet they were going to set up in the Southern States. We got most of that propaganda out of the State of New York, I will say to the distinguished gentleman. Some of it came from closer by.

Mr. KEATING. Some of the propaganda against the Power Trust has also come from the Communists.

Mr. RANKIN. Mighty little of it.

Mr. KEATING. They are always attacking the Power Trust.

Mr. RANKIN. I will give you the facts on the Power Trust that you cannot answer here or anywhere else. You refer to me as a conservative in the House.

Mr. KEATING. Don't let the gentleman misunderstand me.

Mr. RANKIN. I have done more to wring the ruthless hand of the Power Trusts from the necks of the unprotected American people than any other man in Congress, and I can say that without even boasting, and I have not changed my position.

But let us get back to this proposition here. What are you trying to do? What do you propose to do? You know that there are more Negroes who go to the penitentiary in New York where they constitute only about one-tenth of your population than they do from any of the Southern States or any three or four Southern States. The Negro has some weaknesses that the white people of the South take into consideration.

Mr. KEATING. You are referring to your district?

Mr. RANKIN. I am referring to the South.

When you stir friction, those Negroes are going to move. Where are they going—Harlem, New York, Philadelphia, St. Louis, Los Angeles, Chicago, Indianapolis? Then what are you going to do with them?

In the rest of the South—and I am speaking particularly of my district where the relationship is the best I have ever known between the whites and the colored people—you talk about lynchings. There has not been a lynching in my county since I was born, and I am as old as the gentleman from New York, nearly.

Mr. KEATING. I hope you are referring to the chairman.

Mr. RANKIN. I am referring to the vocative gentleman from New York, Mr. Keating.

So, the relationship is the best I have ever known. You are talking about schools, education. At home, schooling is compulsory. The Negroes have their own schools, and they want their own schools. They get along. Negroes in my town now have a better schoolhouse than the one I went to school in when I was a boy. We have no friction with them. They behave themselves better evidently than they do in New York, because we do not send half as many to the penitentiary. They are enjoying a protection that they do not get anywhere else except in the Southern States. If you do not believe it, you just take the records of any other State in this Union now and check and see how many they have living in those States and how many they have in the penitentiary. You will find that those States that are raising the most howl about the conditions in the South have the largest percentage of their Negroes in the penitentiary.

When you disturb the peaceful relations now existing between white man and Negro, one of them is going to move. Which one is it? You know who it is going to be. You have done more harm, just such agitation as this has done the Negroes of the South more harm, deprived more of them of homes, than anything else that has occurred since I have been a Member of Congress. And today, as I said, the time has come when they are not needed as servants. We have three servants to take their place: oil, gasoline, and electricity.

You are not doing them any good. And you do not care a tinker's damn about them. That is the tragedy of it. You don't give a tinker's damn, if you will excuse the expression, about the Negroes in the South. This is done to try to create a political furor for political purposes in the North.

I was here when this crazy measure was up during the Harding administration. There is a speech I made on it at that time in which I exposed the ridiculousness of a bill of this kind, the antilynching bill.

Of course, the Senate talked it to death; and you know good and well this bill never will become a law. I came to Congress that year, and the Republicans had a 169 majority in the House. They took this thing up, and we filibustered it and turned the spotlight onto it in the House. The Senate did the same thing. The election came off that year, and it took about 2 weeks to organize the House, they came so near losing the House; and Mr. Cooper, from Wisconsin, ran on an independent ticket and tied the House up for 2 or 3 weeks, if I remember correctly.

That is what you are doing now. You are not doing yourselves any good. If you want to know about this, go down there. Do not go down there and tell them what you are coming for. Do not go down there and ask the chief of police or the sheriff. There [indicating] is what they call the Negro section. Go over there. Go and see how they live and ask them and see how ridiculous they will make you feel before you get away from there. This thing is not for a thing in the world but just to create disturbance in the southern States, where we have done the very best we could. Nowhere else under the shining sun—nowhere—has the Negro ever received the treatment at the hands of the white people where he lived in large numbers as he does now among the white people of the South. But you are injuring the cause of the poor Negro.

This gang that is pushing this measure is fighting this Negro veterans' hospital down in Virginia.

The other day I had a couple of Congressmen in my office. One of them was a Democrat and the other was a Republican. I said, "Just wait a minute; there is a party coming in here that I think you would like to see. A woman is coming in here to see me. She called me and told me."

She came in. She is Booker Washington's daughter. She is trying to get this Negro veterans' hospital built down in Virginia. We are trying to get it for her.

Who is opposing it? The Communist fronts and the other fronts that do not care anything about the welfare of the Negroes.

They have a Negro veterans' hospital at Tuskegee, Ala., with their own doctors and own nurses, and we have had less trouble with them than we have with almost any other hospital where there is any appreciable number of Negro veterans. We are trying to get one at Mound Bayou, Miss. Not a white person lives in Mound Bayou.

When the Civil War was over Jefferson Davis' brother owned a large number of slaves and he owned a large tract of land. He gave these Negroes this land to settle on, and they built this town on it. They called it Mound Bayou, "bayou" meaning creek. It is evidently near a bayou. No white person lives there—not a white man in the town. A Negro doctor has a clinic of his own there, and they are very anxious to get this Negro veterans' hospital. I am doing everything I can to get it for them. And who is opposing it? The very ones who are pushing this kind of legislation and the crazy FEPC that they know good and well would only result in disturbing the peaceful relations existing between the whites and the Negroes in the southern States and depriving the Negro of a home.

Mr. BYRNE. Thank you, Congressman.

Do any of you gentlemen of the committee wish to ask any questions of Mr. Rankin?

Mr. FRAZIER. Mr. Rankin, it is true, is it not, that in many counties in your State of Mississippi, the Negro population outnumbers the whites 10 or 15 or 20 percent?

Mr. RANKIN. That is the case in the Delta, down in Mr. Whittington's area, and probably some other areas. I think probably there are one or two counties in the lower end of my district that up to this last census at least had a majority Negroes.

Mr. FRAZIER. Have they had any appreciable number of lynchings in that particular section in the last 25 years?

Mr. RANKIN. No, no.

Mr. FRAZIER. You stated there had never been one in your lifetime in your county.

Mr. RANKIN. That is correct.

I hope you will bury this bill so deep you will never hear from it again, and let us get down and legislate for the good of the country.

Mr. BYRNE. Thank you, sir.

Now, Mr. Bryson, of South Carolina.

STATEMENT OF HON. JOSEPH R. BRYSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. BRYSON. Mr. Chairman and gentlemen of the committee, being a member of this distinguished committee myself, and knowing of the arduous task we have, particularly today because we were in

session from early morning until after the House convened, I shall refrain from speaking at length about this extremely important subject and beg permission to revise and extend my remarks.

Mr. BYRNE. That will be given.

Mr. BRYSON. I wish to concur in what has been said by these distinguished Members of Congress who have preceded me, and I observe that most of the gentlemen who sit on this distinguished committee live north of the Mason-Dixon line.

I seriously doubt—I do not question the sincerity, but I seriously doubt—whether the average man who annually sponsors and introduces these kind of bills knows what he is doing. I might paraphrase a scriptural reference wherein words came from the lips of the greatest Man who ever walked on this earth, a man who gave birth to the Christian era, and whose philosophy we all seek to follow, although we may differ slightly in some of our interpretations. It will be recalled He said, "Father, forgive them, for they know not what they do." And so I say of these gentlemen, who—I give credit for being sincere—in my humble judgment, they do not know what they do.

God Almighty in His infinite wisdom made distinct differences between the Negro and the white race. I do not know what His purposes were. But since He endowed the different races with different characteristics, I believe it was His purpose for the races to remain separate and distinct and I think it should be unlawful, both against civil law and divine law, for an intermingling of the races. If the average Members of Congress react as I do to some of the exhibitions we saw here yesterday and today, I do not believe we will ever get legislation like this through. With the necking, the fondling, and the loving, even in the gallery of the House, which was called to my attention by other Members of Congress, it seems to me people of different races have no regard for decency.

I was born and reared in the South. I live there yet. I have had the privilege of visiting in the home cities of some of you distinguished gentlemen. I know there is abject poverty in the South. But who are you to point to the poverty and suffering that exists in the South? Some years ago I had the privilege of traveling with my wife through New England visiting the great metropolitan cities there and we purposely visited the tenement sections of Boston, Mass., during the day and again at night. And we also visited that great metropolitan city of the world, New York City, both during the day and in the evening. I think the conditions that exist in my Southland compare very favorably with the conditions of those that exist in your great cities. Of course, I would be classed as a biased and prejudiced witness. But in all candor and fairness, if I were a Negro, I would choose to live under the conditions that obtain in the South rather than under the conditions as they exist in the North.

Time will not permit us to enumerate.

Mr. Chairman, it is admitted the only alleged lynching that happened last year in the entire Nation unfortunately occurred in my home city where I was reared and where my family lives.

I regret that.

The facts of the case are of record. In order to conserve time, I shall not recount them here; but those who were charged with the

murder were apprehended, and the State was splendidly represented by unrelenting prosecutors and by private counsel. Of course, the defendants were represented by their own attorneys. They were tried in my home city before a judge of unimpeachable character and ability. And all of the northern papers who were inclined to misrepresent the case sent reporters there and not one of them found fault with the judge's attitude in that case. He is a fine young judge. I went to school to his father. No criticism was found on the way the case was conducted. The men were acquitted.

It just happens that my home city is the seat of the western district of South Carolina. Like Arkansas, we have two Federal judicial districts in my State and we have three Federal judges; one is called a roving or floating judge, the other two are resident judges.

Had this case been tried in the Federal court as this act proposes, it would have been tried in the selfsame city. It is true that instead of drawing the jurors from Greenville County, my home county, they would have been drawn from half of the 46 counties in my State, or approximately 20 counties. But, as has been observed by the preceding witness, there are no essential differences in the ideologies, philosophies, and beliefs of the people in my State to those in any other particular State or district. What is more, if this legislation is enacted, local interests and local pride will be lost, suppressed, and discouraged.

I believe it will be hurtful; I believe it will be an invasion of what we cherish, and God knows there is little enough left of State's rights. Our States have either wittingly or unwittingly bartered many of their rights for a mess of pottage in order to get participation in some Federal fund. In my judgment, we are going to rue the day when our governors come, hat in hand, to get to participate in some Federal funds.

I think the governor of a State should be dignified and should stay at home and not come to Washington for every little imaginable assistance.

I have every seriousness in appearing here. Heretofore we probably have not treated the minority race as we should. But I can easily tell the attitudes in the South are changing as well as elsewhere. I believe every person, whether a Yankee or a Rebel, has an inherent God-given desire to do justice to and for all mankind; and I believe we are making great progress toward that end. But some long-haired men and short-haired women, so highly educated, continue to penetrate into our Southland and try to dictate and force their alleged advanced ideas upon our people. It is retarding the progress that we are making.

Although we are poor, as a rule the colored people per capita are much poorer than the white people and they are more prolific, it seems to me; however, the white people are rather prolific in our country. Perhaps the North would be better off if the native-born people who live there were a little prolific and looked after their home work a little bit better rather than try to lift the restriction of the immigration law so as to import a lot of foreigners. If we had more good, native-born American citizens, we would not need to talk about amending the law.

I think we are solving this problem and I believe you gentlemen know we are solving it. Incidentally, something was said awhile

ago about our penalty. Under our State statute, a county that allows a Negro to be lynched within its borders has to pay a penalty of $2,000. Our county is being sued now. Naturally the county would defend the suit when those charged with the crime were acquitted and, as in every case, it is duty of the county officials to fight a case of that kind; but under the State law a county in whose borders a man has been lynched has to pay a fine of $2,000. That is not a Federal statute.

Mr. KEATING. Are there many States that have such a statute?

Mr. BRYSON. I do not know; but South Carolina has. Fortunately, not many fines are collected because we do not have many lynchings; but the statute is there. However, I do not remember such a fine or penalty being collected because we do not have many lynchings. Think of it, only one lynching in all the Nation for an entire year. That is almost perfect. But with all this agitation the chances are we might have more. This is a problem we have. It is an extremely difficult one, an embarrassing one. We crave your help, your indulgence, and your sympathies, rather than having you succumb to the agitation of people who may or may not be paid or inspired by those who would seek to divide and destroy us, which follows the communistic pattern.

Mr. TACKETT. Would the gentleman yield for just one question?

When there are thousands and thousands of murder cases and there is only one lynching case in the South, do you not think it would be better for the Federal Government to pass an antimurder law?

Mr. BRYSON. In all probability. And I think if we are going to seriously consider these bills, it certainly would be logical to make it broad enough to embrace mob lynchings. You gentlemen cannot defend a lot of the mob lynchings that happen in your fine States any better than I can defend a lynching that happens in my county, infinitesimal in number as it is or may be.

Thank you.

Mr. LANE. Congressman, we are always glad to hear from you and your remarks are very interesting. But I would like to ask you: What is the name of that city that had that one lynching?

Mr. BRYSON. Greenville, S. C., my home city.

Mr. LANE. Was that a lynching of a colored person?

Mr. BRYSON. It was a colored person, and I will tell you briefly what the facts were. A white man driving a taxi was approached by two Negroes who turned out to be under the influence of liquor. They employed this taxi driver to drive them to another county seat, Pickens County, a distance of 12 miles away, I believe. I am giving you only the general facts. On the way, they robbed him, assaulted him, and threw him out on the side of the road in the cold of midwinter, from which assaults and wounds he died. They took his car—his cab. Later they were apprehended and put in Pickens County Jail. As I say, I am only talking generally. When that message reached the cab association, a great many of the members were fresh from the war, veterans, and you know, when we were in the war, we were taught to fight and kill. Sometimes it was necessary for us not to truly evaluate those things in order to become good soldiers. These boys had not been back from the war very long and when they heard of this atrocious assault upon one of their helpless drivers, it is said

that in more or less sudden heat and passion some boys suggested they go and get him. And they went and got him. Later the Negro's body was found. And under those facts they were apprehended and tried, as I have just stated, in a county that is as proud of its law-enforcement record as any county would be or could be within the confines of this great country. We do not sanction, we do not condone, and we do not defend instances of this kind. We regret it. As I said, it has been many and many a year since anything like that has happened, if ever, and the chances are it will never happen again. But when one continues to condemn us for such instances, we might admonish some of those who precipitate the trouble by sex crimes and the agitation of the mixing of the races, and so forth. It might be wise for them to take a little advice while they are criticizing those of us who are making an honest, sincere, and logical effort to deal with this most difficult problem.

Mr. BYRNE. Thank you very much, Congressman.

Mr. KEATING. I want to add my thanks to the gentleman from South Carolina for the very fine presentation he has made and to say that, while I am the author of one of these bills, and perhaps do not see eye to eye with the gentleman in every respect as to whether they should be enacted, I do realize that the South has made great progress and that the eventual millenium is to come about through a better understanding.

Mr. BRYSON. Education, religion, and enlightenment.

Mr. KEATING. The only point where the gentleman and I would probably differ would be that it would seem to me that some legislation might be more effective in bringing about that eventual result than to leave the matter without any legislation. I respect the gentleman's views and certainly feel that a presentation such as his is helpful to a better understanding of the entire problem.

Mr. BRYSON. Thank you.

Mr. BYRNE. Does anyone else wish to be heard in opposition?

(No response.)

Mr. BYRNE. If not, the record will be open for the inclusion of extension of remarks and such other data as anyone who is opposed to these particular bills mentioned in the record wishes to include. We will hold it open for at least a week, 1 week from today.

In other words, anyone who wishes to include anything in the record, the stenographer and the counsel of our subcommittee, Mr. Foley, will be pleased to receive them and see that they are included in the record.

We will also go further than that. This subcommittee will be ready to assemble, if necessary, and listen to witnesses who may not have known of this today. In other words, we are going to take an adjournment now for 1 week from today at 2 o'clock so that the record will be completed in opposition. Is there any objection to that? If not, we now stand adjourned until 1 week from today at 2 o'clock.

(An adjournment was taken at 4 p. m.)

ANTILYNCHING AND PROTECTION OF CIVIL RIGHTS

TUESDAY, JANUARY 24, 1950

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 3 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The committee met, pursuant to notice, at 2 p. m., Hon. William T. Byrne (chairman) presiding.

Mr. BYRNE. We are ready to start the hearing now. I believe our first witness this afternoon is Dr. Griffith of New York.

You may proceed, sir.

STATEMENT OF DR. H. M. GRIFFITH, VICE PRESIDENT, NATIONAL ECONOMIC COUNCIL, INC., NEW YORK, N. Y.

Dr. GRIFFITH. Gentlemen of the committee, the National Economic Council, an organization including a representative cross section of the American public on a national scale, is opposed to enactment of this or similar legislation, and urges you to reject it.

This was prepared, Mr. Chairman, particularly with reference to H. R. 4682.

In spite of the fact that this legislation appears to be an effort to further humanitarian purposes, we believe that, if enacted, it should and would be held unconstitutional, not only as to the letter of the Constitution but also as repugnant to our whole governmental system and subversive of the very liberties which it professes to secure.

This legislation would be an attempted Federal invasion of rights belonging only to the States and local communities as well as matters not in our fundamental law within the power of any branch of Government, whether Federal, State, or local.

As the distinguished members of this committee know, the powers of the Federal Government are delegated and limited. Only that which is given it in the Constitution, or is found by necessary implication, belongs to the Federal power.

Insofar as any of the objects sought to be gained by this bill are within the province of any legislative body, they clearly are not within the province of the Congress. They relate to the general police power reserved to the several States and in certain respects, in differing measure, delegated to the local communities by the States.

But there are fundamental rights of the citizen which, since they exist prior to and independent of any government, are not susceptible to the power of any officeholder or combination of officeholders, however, associated.

Against the exercise of these basic rights any legislation, no matter how enacted or by whom, is and must remain a nullity. It is not binding upon the citizen and it is his duty to ignore it. In spite of its professed concern for "civil rights," this bill would arbitrarily attempt to quench certain of these unalienable rights.

It is, for example, an unalienable right of a free man to choose his own associates and associations. Likewise, combinations of free men possess the right to select their own associates and associations. This necessarily involves choice. And to say that it involves choice is simply another way of saying that it involves discrimination.

This word "discrimination," so smeared and ridiculed as antisocial and somehow immoral, is at the very foundation of all free life. If my companions and associates are to be chosen for me by others, even by legislators, then I am not a freeman. But, if I am to select them for myself, I must as a matter of course discriminate between those with whom I wish to associate and those with whom I do not wish to associate. Whatever reason I have for my discrimination belongs to me alone, and cannot be rightly questioned by anybody, whether Congressmen, members of a State legislature, or village selectmen. The idea that there is a "freedom not to be discriminated against" is both a distortion of the idea of freedom of association and plain hokum. Every one of us discriminates against somebody and in favor of somebody else every hour of every day, nor could civilized life go on without the exercise of such discrimination. Yet, because it takes place in the external world, it can be called "social," and such legislation as this proposes to abolish it. The moment it is abolished, that moment, in the name of "civil liberties," you have embraced the philosophy of totalitarianism and chosen to live with it.

Another facet of unalienable freedom is the exercise of one's own religious faith. This right is not conferred upon us by any political instrument, even the Constitution. It is a right given to each man by God, and for which the individual is accountable to nobody, save to God alone. To say that he is accountable to government of any kind is to say that a man is not religiously free.

Now, the whole pattern of thought implicit in so-called civil-rights legislation is repugnant to and destructive of this basic religious freedom. It is found most clearly of all in so-called FEPC legislation, but it is interwoven in this proposed legislation as well. And it is thoroughly bad.

No matter what religion I profess, it is my right to believe and practice it in my daily life. It happens that I am a Protestant Christian, but if I held any other faith my right to practice what it enjoins would be the same. It is a part of my religious faith, and also an ingredient of my religious freedom, to believe that profession and practice of the Christian faith make a man better than he would be without such faith and practice. If this were not so, there would be no point in thinking the Christian religion desirable or in urging others to embrace it. This being the case, I have a perfect right, in my daily life, to act upon my belief, and to prefer association socially and in business with those who profess the same faith.

If I am an employer, I have a right, which no government can take away, to prefer Christian employees as more trustworthy, and to employ them, exclusively if I will. Or, I have a right, if I choose, to employ none but Jews, or none but Negroes. The attempt to brand

such a course of action "antisocial" and "bigoted" is an attempt to destroy my own freedom with meretricious and meaningless slogans. On the other hand, if I think that profession and practice of some other religion than my own renders someone else less trustworthy, then I have a perfect right, which no legislature or court can touch, not to employ such person. Of course, that is discrimination based upon religion. As a matter of fact, any man may be wrong about the actual effect of his own religion. It may make men worse rather than better. But that is the concern of nobody else. The point is, the so-called "right" not to be discriminated against because of one's religion is not a right, does not exist, and cannot be made into a right by legislation. Erecting it into a "right" by the legislative process can only be a pretended and attempted interference with the free exercise of my own religion, which is a right. And, if the assumption of power by any government or branch of government to tell me that I cannot discriminate in social and business associations according to the tenets of my religious faith is once conceded, then the substance of religious liberty is gone.

The attempt to give the form of law to a Federal invasion of an area prohibited to it, and of other areas in which no legislation by any governmental power is competent, can be viewed as nothing less than a deliberate effort to destroy our Federal-State constitutional balance and our fundamental freedom in the interest of a unitary, monolithic state with supreme powers over all life, unchecked by constitutional limitations. When viewed in conjunction with other legislation of the same general character, the intention is obvious.

This is not to say that everyone who proposes, supports, or votes for such measures as this intends the destruction of our balanced system of government and our individual freedom. Many sincere, well-meaning persons support such legislation merely because they believe in the nobility of its professed objective. They do not see the real nature of what is proposed or the inevitable, tragic results that must follow. Yet, such good intent is no argument for the legislation; its evil nature and its inexorably evil effects are and will be unaffected by the good will of sincere people who mistakenly support it.

This legislation is unnecessary.

The Constitution of the United States and the constitutions of the several States, together with legislative enactments already existing thereunder, are adequate to protect exercise of the unquestioned civil rights belonging to every American. In any cases of bona fide denial of civil rights the fault is not with the law, but with its enforcement. Yet, the way to secure enforcement of a good law is not to enact a bad law. As a matter of practical procedure, enactment of this legislation would make enforcement of presently existing but inadequately enforced good laws almost impossible. The way in which good, but unenforced laws may be made effective is by the slow and patient process of making them acceptable to the conscience of the community in which they are to be enforced. The whole history of law is a demonstration of this elementary principle. If the community is not ready for enforcement, then coercion will not make it more ready, but rather the opposite. It is strange that so many could so soon have forgotten the attempt to coerce what was once described as "an experiment noble in purpose." If the cry for full and lawful civil rights for

everybody is sincere, then why embrace a course of action which, by alienating millions will cause bitterness instead of concord, disruption and violence instead of mutual respect and friendship? Respect and friendship must in their nature be won patiently and sometimes only by slow degrees; they cannot be forced, and the attempt to force some people to love other people may only result in both groups hating each other.

Situations such as this are not new in American life. A hundred or more years ago numbers of groups—such as the Irish—were subject to severe social and economic disabilities, some of which even led to rioting, arson, and bloodshed. If the type of legislation now being considered had been adopted then, in all human probability the condition would still be festering in American life. But since nobody then proposed such solutions as are now proposed, the passage of time did its work; mutual respect was attained, and those groups have either disappeared as groups or are almost entirely integrated into the American community. In the case of the Negro race, because of the peculiar historical background, the process may take longer. It may not result in an interbred race, and there is no reason to hope that it should. But enactment of such legislation as this is bound to set the clock of understanding back, not advance it.

We are not bound to enact this or similar legislation by virtue of any international agreements.

In the text of this bill, as well as in other similar bills, it is represented that because the United States has ratified the UN Charter this country is now in a different position with regard to the civil liberties of those within its borders than it was before such ratification. The same is implied of the so-called "universal declaration of human rights" of the UN. The implication, though not expressly stated, seems to be that we are now bound, under article VI of the Constitution, to consider the UN Charter and UN declarations as having the force of treaties and as being as much the supreme law of the land as the Constitution itself.

It is difficult to see how anyone learned in the law could fall into such egregious error. Quite apart from the actual content of either the UN Charter or the UN declaration, no treaty can amend the Constitution; and, while treaties have the force of law as do Federal statutes in relation to State constitutions and laws, treaties, like laws of Congress, are nugatory insofar as they run contrary to the Constitution. In other words, the Constitution cannot be amended by the device of treaty-making. So that if the provisions of the present bill are unconstitutional, as I think they are, not even a hundred treaties could give them validity.

If, for example, the United States should conclude a treaty with a foreign nation providing, inter alia, that the right of protection of citizens against unlawful search and seizure should be suspended for 10 years, such a treaty would be void in the United States as against the constitutional guarantee.

Mr. DENTON. What do you say about the Migratory Bird case? That was enacted under a statute after treaty with Canada to protect migratory birds.

Dr. GRIFFITH. I am sorry; I didn't get your point.

Mr. DENTON. We passed a Federal statute some years ago to protect migratory birds. The basis of that was a treaty made with Canada, I think; was it not?

Dr. GRIFFITH. That is right.

Mr. DENTON. Did not that treaty give the Congress the power to enact a law which it would not have had otherwise to carry out that treaty?

Dr. GRIFFITH. So long as the law itself was not unconstitutional.

Mr. DENTON. Well, you say, the protection against search and seizure, or something like that, but it did give added power to the Government by having that treaty. Without that treaty, the Congress could not have passed the Migratory Bird Act.

Dr. GRIFFITH. I don't think so.

Mr. DENTON. Was it not upheld on the basis of that treaty-making power?

Dr. GRIFFITH. That is right. It implemented the treaty. But was there such a case where the law, such a law, was declared unconconstitutional without the passage of treaty? It is a matter of guess as to whether a statute if passed without a treaty would have been unconstitutional.

Mr. DENTON. That may be, except the Court put it on that ground.

Dr. GRIFFITH. It was supposing a case that was not before it.

Mr. DENTON. Excuse me. You mean it put it on this ground, that because the treaty had been made they had a right to pass legislation to enforce the treaty.

Dr. GRIFFITH. That is true, but if that had not been true, there would have been no such right. It does not say——

Mr. DENTON. It naturally follows from that.

Mr. GRIFFITH. It is a fundamental principle of constitutional law, is it not, that you cannot acquire by saying so, powers which are not delegated to you in the first place. There had to be that power delegated in the Constitution. It was delegated prior to the making of the treaty.

Mr. DENTON. The treaty-making power was delegated.

Dr. GRIFFITH. But you could not make anything lawful by treaty.

Mr. DENTON. Having made the treaty, they could pass legislation to enforce it.

Dr. GRIFFITH. So long as the treaty itself did not contain anything which was contrary to the Constitution.

Mr. DENTON. It did not pass anything involving an inhibition. I may be wrong, but they put it on that ground that it gave——

Dr. GRIFFITH. I am not familiar with the exact wording of the portion of the decision that you mention, sir.

Mr. DENTON. It has been a long time since I have seen it.

Dr. GRIFFITH. But I doubt whether the Supreme Court said that the Congress by ratification of a treaty, that additional power was gathered to the Federal Government that did not exist already.

Mr. JENNINGS. What is the purpose of that migratory-bird law anyhow? Is it not to preserve wildlife?

Dr. GRIFFITH. That is right, sir.

Mr. JENNINGS. There is a vast difference between a wild bird that flies across the boundary line of this country and a citizen in his home. I do not do much duck shooting because I nearly froze to death

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the only time I ever tried it; so I quit because I couldn't see where the joke was. But I can understand why it is against the law to kill a duck or goose out of season, or kill a duck from a motor-propelled boat, or shoot a goose from an airplane. There is a vast difference, if that is done, and it is done in violation of the law, if you get a proper search warrant, properly describing the premises where the violator lives and where he has secreted a duck, the killing of which was a felonious killing of a duck, you could go in there and hunt the duck with a goose. But I see a vast difference between rights of a citizen with respect to what you have been talking about here in this very learned discussion in which I have been so much interested. I see a vast difference between the fundamental rights of a citizen and the wild goose or wild duck in this country or Canada.

Of course we could have legislated for the protection of these wild fowl without any treaty with Canada. What can Canada do about it when a duck or a goose came down here which is wild by nature? It flies a charted course. It is marevlous how they come South and go where they want to go and always go back. They don't get lost. They don't have any compass. They have an instinct that is superior to the compass or chart or logbook.

Dr. GRIFFITH. Yes; I would like to adopt your opinion in respect to that difference as my own.

Mr. JENNINGS. That is just the way I see it. The less law we have the better we can get along, if we are intelligent and people of good will.

We have got enough laws now that we don't know when we are violating the law. I guess I violate it every day, I am satisfied that I do, in many respects, violate the traffic laws, the laws of health. I have been digging my grave with my teeth for a long time.

Mr. BYRNE. Proceed, Dr. Griffith.

Dr. GRIFFITH. In like manner, the Federal Government cannot acquire powers not delegated by the people in the Constitution. Article V of the Constitution prescribes the only method by which it may be amended. Citation of the United Nations Charter and the United Nations Declaration, therefore, is simply not in point. Neither of these documents affects civil rights within the United States, its possessions or Territories.

This legislation is political in nature, is addressed to political objectives, and is designed to multiply, not allay, race frictions.

Every political realist knows that the purpose of this and related proposed legislation is primarily political. It is part of a great, shrewdly conceived design to get votes. It is a device for capturing permanently the so-called Negro vote in cities of the North for the partisans of the administration now in office. As such, it is a cynical piece of business, for while paying lip-service to individual rights, those who promote it expect to corral large blocks of votes of Negroes as such—thus showing, whether they realize it or not, that they consider Negroes to be second-class citizens who do not think for themselves but who can be herded like cattle.

The political design, however, goes much further. It is not only an effort to get and keep the so-called Negro-vote in the North—it is an attempt to destroy the Democratic Party of the South and erect upon its ruins a political combination that, in conjunction with administration supporters in the North, could transform America permanently into a one-party Nation.

What I have said will be denied. of course, but there are too many straws already that show where the wind blows. If this whole effort were not political, it would not be made. Those who understand the problem of the South know very well that legislation such as this will only serve to inflame race antagonisms—never to allay them. Indeed, that such a result is foreseen is certain from the fact that this bill sets up a new bureaucracy to deal with so-called civil-rights affairs. That bureaucracy will grow. If it really does the coercive job that will be required by developing events following its creation, it will eventually have to recruit a force the size of a standing army. It will have a vested interest in keeping the "civil rights" pot merrily boiling. Whoever has heard of a bureau that will work hard to abolish itself? There will be jobs for the faithful, and the United States will have come full circle back to the disgraceful era of the carpetbagger. Are we so ignorant of our own history that we do not remember the bitterness of that era, and the disaster it was to the reconciliation of Americans of the North and Americans of the South? Are we so incredibly short-sighted that we wish to go through the whole sorry process all over again?

There are other sound and cogent reasons why this legislation should be rejected. But those herein stated should, we think, convince every American interested in real national unity, in real progress in relations between Americans of varied race, that this legislation is not the road we should take. The other road may, concededly, be longer. But it will get us to our destination. The road offered by this and similar legislation may be so surfaced that we can make more speed, but over the rise it ends at the edge of a precipice, and when we get there we may be going too fast to stop.

Mr. BYRNE. We are very thankful to you.

Our counsel, Mr. Foley, would like to ask you a couple of questions, Doctor.

Mr. FOLEY. Doctor, is it your position that the entire bill as it is drawn is unconstitutional, or only certain sections of it?

Dr. GRIFFITH. I would say the entire statute. Let me add to that blanket statement, Mr. Chairman, by saying that there are some portions of it which simply restate rights which already exist in law and with which we have no quarrel. In fact, we are in favor of using existing machinery and existing processes to enforce insofar as it may be practicable.

In other words, not every word of that bill represents something which we consider contrary to the spirit of the Constitution, but it is the way that it is all put together and the machinery that it is proposed to erect to do it, and the method which that machinery would have to use, to which we object. That is why we say that the bill as a whole is unconstitutional.

Mr. FOLEY. You do not question the power of Congress to establish a Commission on Civil Rights; do you?

Dr. GRIFFITH. It depends on the powers given to the Commission.

Mr. FOLEY. Under this bill the power is purely one of study and advice; is it not?

Dr. GRIFFITH. It does more than that.

Mr. FOLEY. Do you have any question about the power of Congress to set up a Joint Committee on Civil Rights?

Dr. GRIFFITH. I will say again it depends on the powers conferred on the committee. It can set up a committee to do almost anything that it wants to, but whether the whole thing would be constitutional would depend upon he powers given.

Mr. FOLEY. The amendment to the present law, section 241 of title 18—that is on page 10 of the bill—the only change made in the present law is twofold: first, the present law applies only to citizens. The proposed bill would extend it to inhabitants of any State, Territory, or District. The present law only applies to conspiracy. The proposed law applies not only to conspiracy but to the substantive crime. Do you say that that law is unconstitutional?

Mr. JENNINGS. What do you have reference to, the law against violence to citizens?

Mr. FOLEY. That is right, sir.

Dr. GRIFFITH. Section 241 (a) and (b)?

Mr. FOLEY. Yes.

Dr. GRIFFITH. I do not think that those sections standing alone would necessarily be unconstitutional. But I think that there already exist laws which fully cover the situations mentioned there.

Mr. FOLEY. That is the law today, is it not, Doctor? It has been upheld on numerous occasions by the Supreme Court as constitutional. The only difference is that we are going to punish the individual for the substantive crime under the proposed bill. The United States Supreme Court has said you can punish for the conspiracy. Do you see any difference between the conspiracy to commit a crime and the crime committed?

Dr. GRIFFITH. The courts have seen a difference.

Mr. FOLEY. Have we had a case under that section? We have never had a case of an individual's action on that section.

Dr. GRIFFITH. Then why do you need a law?

Mr. FOLEY. For the simple reason that you can punish only when two people conspire to commit a crime, but not if one person commits that very crime. He goes free.

Dr. GRIFFITH. You mean if one person commits the crime that the other people were accused of conspiring to commit goes free? So far as the Federal law is concerned?

Mr. FOLEY. As it exists today.

Dr. GRIFFITH. Is there not a remedy to proceed against this man in the State courts?

Mr. FOLEY. There may be. It depends upon the facts and circumstances of the State law.

Mr. JENNINGS. I believe I would say, if I may be permitted to interpolate there, that in all the States of the Union about whose criminal laws I have ever heard, with which I am familiar, that the unlawful killing of a real person and being by anybody, by one person acting on his own initiative, alone or in concert with others——

Mr. DENTON. The statutes protect a man with rights he has under the Constitution of the United States, and that is a Federal law, a protection that the Federal Constitution gives him.

Mr. JENNINGS. I was speaking of the fact that it is the substantive offense against the laws of each State of the Union to take human life

or to put a person in fear or to assault them or commit a battery. That is a violation of a State statute.

Now, of course, we do have these laws, this Federal law, aimed at conspiracy to kill or to trespass upon the rights of a citizen. I do not have any particular objection to having the Federal Government declare it a crime for somebody to kill somebody somewhere; but I do not know exactly; I am in doubt about the power of the Federal Government to do that sort of thing unless it should appear that due to local conditions that citizen could not get equal protection of the law from State authorities. As a rule, they can. Of course, there are instances we know about, rare instances, recent occurrences, where somebody's life has been taken, maybe by one person or by a number of persons acting in concert. Of course, under our law, all persons present aiding and abetting and ready to aid and abet are guilty as principals. That is a statutory principle of the law of Tennessee. I imagine it is the law of most other States. A person by his presence, by his demeanor, by his attitude, by his evidence to participate, if necessary, very properly should be held guilty as a principal.

There are so many ways by which a man might be deemed to be part of a conspiracy: By his demeanor, by what he might say. I have had some trouble now with respect to getting these laws that were originally passed for the protection of the rights of the duly emancipated colored people enforced as against men who today trespass against their right, the rights of their white fellow citizens. It has been done. I was mighty glad we had that sort of a provision. But it has not been done for some time. Francis Biddle used to do it when he was Attorney General of the United States and there may have been some steps taken. I believe there have been since, by the Department of Justice, maybe in South Carolina, maybe in Georgia.

Mr. DENTON. May I ask the doctor a question there?

Doctor, do you concede that—or do you contend that Congress does not have the power to provide that if any person injures or oppresses or threatens or intimidates any inhabitant in the exercise of their right or privilege secured to him by the Constitution, or the laws of the United States, Congress does not have the power to protect those provisions of the Constitution and pass laws to protect them?

Dr. GRIFFITH. I think there is a general power conferred by the fourteenth amendment to pass legislation which does enforce the amendment.

Mr. DENTON. Does this do anything except amend title 18?

Mr. FOLEY. Pages 10 and 11.

Mr. DENTON. Is there anything in this act that does more than carry out those provisions of the Constitution, and in accordance with an old, established principle of law on which there have been written many, many opinions?

Dr. GRIFFITH. I would not be prepared to say that the particular portion, this particular section, would necessarily be unconstitutional, although I think that the bill as a whole is.

My question a moment ago to Mr. Foley rather related to this: Whether there was not already a remedy in the law of the States, the several States.

Mr. DENTON. Of course, you have many occasions where there is a Federal crime and a State crime for the same act. If a man takes an automobile and takes it in interstate commerce, that is punishable

under a Federal and a State act. Kidnaping is a violation of both statutes. Embezzlement from a national bank is a violation of Federal law and State law. But certainly within the framework of the Constitution, Congress has power to pass acts to carry these out. You do not question that, do you?

Dr. GRIFFITH. Not as to this particular section; no.

Mr. DENTON. Is that not the heart of the act? The other thing is to set up a commission.

Dr. GRIFFITH. I do not think that is the heart of the act, because the whole drift of the act is to intrude the Federal Government into a sphere which is in its very nature a community sphere of the States and of the local communities, and as I tried to say in my statement also, intruding the Government into a sphere which belongs to the citizens and cannot be touched by any government.

Mr. DENTON. The Constitution does protect the citizens of the United States in certain rights, does it not?

Dr. GRIFFITH. That is right.

Mr. DENTON. There are three amendments protecting citizens of the United States in certain rights.

Dr. GRIFFITH. There are amendments and also parts of the Constitution itself which do provide for the protection of those rights. That is precisely why I consider this bill as a whole contrary to the spirit of the Constitution.

Mr. DENTON. You have a provision in the State courts that convicts a man by confession. It is obtained by undue influence or by fraud or by violence. In protecting his right as a citizen, the Supreme Court can take over the State case and reverse that, can they not?

Dr. GRIFFITH. That is right.

Mr. DENTON. Does this do anything more than carry out that principle?

Dr. GRIFFITH. As I have been trying to say, sir, the particular section here may be within the competency of Congress. I am not saying that I am certain it is; but I am not saying that I do not think it might not be. But the question before us is the wisdom of a particular piece of legislation as a whole.

Mr. DENTON. Not the constitutionality but the wisdom of it that you oppose.

Dr. GRIFFITH. No, sir. That is not what I said. May I repeat. I said that this particular section if enacted might be unconstitutional. I believe the bill as a whole is unconstitutional for the reasons which I stated in my prepared statement. But I believe that entirely apart from the question of constitutionality, that the question of the wisdom of passing such legislation and the consideration of its effects is a very substantial question to be considered by the Congress.

Mr. FOLEY. Doctor, would you advocate the repeal of sections 241 and 242 of the Penal Code, then, as they exist today?

Dr. GRIFFITH. Not necessarily. Have I said anything that indicated that I would?

Mr. FOLEY. Are they not acts which tend toward this objective that you do not approve of?

Dr. GRIFFITH. Standing by themselves, they probably would not, as they do now. But in connection with this and the whole complex of legislation which is being offered together, some of which are spread on this table before us here, I think they would be.

Mr. FOLEY. As a matter of construction, Doctor, is it not a principle of law that the court can only construe a specific statute before it, that this bill, if enacted by the Congress, must be construed as such and not in connection with an antilynch bill that Congress may enact subsequently?

Dr. GRIFFITH. I see I did not make my point clear to you. My point was not as to whether or not a statute or a section of a statute could be construed all by itself but whether it was wise in the Congress to take the total direction which is proposed in this whole complex of legislation.

Mr. FOLEY. Then just so I understand you correctly, Doctor, you are drawing a distinction between the wisdom of the proposed legislation and the legality of it, correct?

Dr. GRIFFITH. I say that you can consider them apart. I say that considered from the point of view of wisdom, it is extremely unwise for reasons which I have stated. I say that so far as the constitutionality is concerned, that while certain sections of it might, standing by themselves, be constitutional, I think that the effect, the legal effect of the whole taken together is contrary to the spirit and the letter of the Constitution.

Mr. JENNINGS. Now, Doctor, coming back to these provisions of section 241 of the code, and then these added provisions which expand the prohibitory inhibitions or provisions of this act with respect to rights of citizens, these sections in a good many instances, perhaps in most instances, have been enforced by the Federal courts for protection of the right of citizens to vote. Now, under Federal law, you can steal all the votes you want to from the candidate and he has to take it unless he can take care of himself.

In a contest, or prosecuting these fellows for stealing the citizens' vote, there is an open season on candidates; but these laws have been salutary in the protection of the rights of the citizens to vote and have their votes counted as cast, and to have them counted undiluted by stuffing the ballot box. That was held by Judge Hayes in the case of H. Youngford up here in Kentucky with respect to some cases that came from Harlan County where a bunch of enterprising citizens up there, in order to carry an election, stuffed the ballot box, put in a lot of votes, ballots there were not the votes of anybody except these thugs.

The defense was made that these people who voted could not complain because they actually counted their votes. The court held that they had a right to have them undiluted or undiminished in effect by these spurious votes and he was upheld by the Supreme Court of the United States in the case of *Saylors* v. *The United States*.

I like these laws. Personally, I want to see these laws strengthened and expanded because I have been in a running battle for 10 years with a bunch of fellows that have been trying to count me out by stuffing the ballot box and running over and hitting my friends in the head with blackjacks and running them off from the polls, and that sort of thing.

I tried a case last year or year before last where 1 election officer and 1 precinct where 832 people voted, miscalled 1,130 votes—not that many votes, but he just stole wholesale. He was stealing from one fellow in particular. But to show how adept he was and how thorough he could be, he miscalled 1,131. That was demonstrated by the fact that we locked up the ballot box and put it under guard and took

these out and counted them, and a recount of the ballots showed that this officer, and he was a member of my church, too, a Methodist, a Sunday school teacher of the class of which I am a member, and I nailed his ear to the bar. It did not make a difference, a bit of difference to me. I did not give him any more tolerance than if he had been a Baptist or a Mormon. I got after him. I want to get that thing stopped.

Mr. DENTON. Let me ask you about section 242 (a). Do you think that it is without the power of Congress to pass laws to protect a person in his right to be immune from exactions of fines, or deprivations of property, without due process of law?

Dr. GRIFFITH. Referring to which section, sir?

Mr. DENTON. 242 (a) on page 13. As a matter of fact, the courts have held that for 80 years, have they not?

Dr. GRIFFITH. Yes; I think these all express——

Mr. DENTON. That is the law in many fields. They have a right to be immune from punishment for crime or alleged criminal offenses except after a fair trial and upon conviction and sentence pursuant to due process of law. You do not think that is without the powers of Congress?

Dr. GRIFFITH. If they already have that right, why do you need the legislation?

Mr. DENTON. These are amendments. You said the act is unconstitutional. This is defining certain rights that have been upheld by courts. They do, very often. But what I am asking you is if you think that is a violation of the Constitution to pass that kind of statute.

Do you think that the right to be immune from physical violence applied to exact testimony or to compel confession of crime or alleged offenses, that that is contrary to the Constitution?

Dr. GRIFFITH. I think it is a constitutional right to be immune from those matters which you have mentioned, but I do think that it is the primary function of the States to enforce the law in that respect.

Mr. DENTON. Suppose it is; does that take the power away from Congress to protect the provisions set forth in the Constitution? Does not the Congress have the power to protect, to exercise the power that the Constitution gives to him?

Dr. GRIFFITH. Yes, it does.

Mr. DENTON. Is that not one of the rights that the Congress has given in the amendments to the Constitution?

Mr. DENTON. If the Supreme Court of the United States can review State decisions tried in a State court, and set it aside because a man was convicted by confession that was obtained by violence—that is the opinion by Justice Hughes, the first one. Does not the Congress have the same right to protect that right that an individual has?

Dr. GRIFFITH. I am not certain that it has the right to pass a statute taking it out of the jurisdiction of the State courts.

Mr. DENTON. It does not take it out of the jurisdiction of the State courts. It is a concurrent right.

Dr. GRIFFITH. Who is it that chooses which court it shall come before?

Mr. DENTON. He can be tried in either or in both. He can be tried in a State court and a Federal court. As a matter of fact, I remember

one man I defended in the courts for the same offense. Twice I have done that. I remember a governor of my State found not guilty in the State courts and they tried him in the Federal courts and found him guilty. That happens in a good many cases, does it not?

Dr. GRIFFITH. Yes, I guess it does. I do not see why it does not violate double jeopardy, though.

Mr. DENTON. Because you have a different sovereign dealing with you, not the same sovereign.

Mr. JENNINGS. As a rule, they do not punish in both courts, do they?

Mr. DENTON. I have had it twice where I have had to defend a person twice.

Mr. KEATING. Maybe your fellow was twice as bad.

Mr. JENNINGS. But if you get a fellow in one court, they generally let him go at that unless, as has been suggested here, he is mighty bad.

Mr. FOLEY. Doctor, is it not a fact that in regard to Mr. Denton's statement, protection of that right, section 5 of the fourteenth amendment imposes upon Congress the duty to enforce that amendment by appropriate legislation?

Mr. JENNINGS. "Shall do it?" Or does it say it may do it?

Mr. FOLEY. It shall have the power to enforce.

Mr. JENNINGS. It does not say it shall exercise the power. You could not mandamus a legislative body. It in its discretion, if not in its wisdom, could comply and generally does in many instances to exercise some of these powers.

Mr. DENTON. Let me ask you one other thing. Do you see anything wrong about setting up a joint committee of the Congress to investigate civil rights?

Dr. GRIFFITH. When you say, wrong, are you referring now to the wisdom?

Mr. DENTON. No; without their power.

Dr. GRIFFITH. Not unless they give to them powers which Congress has no right to give.

Mr. DENTON. Then would you see anything in violation of the Constitution for the President to set up a commission to investigate civil rights?

Dr. GRIFFITH. No.

Mr. DENTON. Would you see anything wrong for the Department of Justice to set up a department to enforce civil-rights law when there are certain civil-rights statutes that you say are valid?

Dr. GRIFFITH. I do not think that would be unconstitutional per se.

Mr. DENTON. You do not find it unconstitutional but you object to the policy of it—whether it is good policy.

Dr. GRIFFITH. I will have to answer that as I did before, by saying that I do not think this act as a whole unconstitutional.

Mr. DENTON. What do you mean by, "on the whole it is unconstitutional"? That is, if there are no provisions of it that you point out are invalid.

Dr. GRIFFITH. Because I think that it attempts to abolish the right to discriminate which is the right of the citizen and which no government——

Mr. KEATING. What right? What law? Or what constitution or anything else gives you, gives the citizen, the right to discriminate?

Dr. GRIFFITH. I do not believe you were here, sir, when I read my prepared statement. But at the risk of some repetition, I will say that it is the natural law, the right to choose one's own associates.

Mr. KEATING. That is your idea of the natural law. It isn't the general idea of the natural law that a man has a right to discriminate against someone else.

Dr. GRIFFITH. I am not sure what you mean by the "general idea." Do you mean the idea held by most people who have ever been asked the question about it, or what?

Mr. KEATING. I am asking you.

Dr. GRIFFITH. You asked me a question, sir, as to whether it was the general idea and I want you, before I can say "Yes" or "No," I want to know who you include as those who hold a general idea.

Mr. KEATING. What I want to know from you is who establishes your natural law which you say gives you the right to discriminate?

Dr. GRIFFITH. Almighty God.

Mr. KEATING. Is that seriously your idea of God?

Dr. GRIFFITH. Mr. Chairman, if I may be permitted to reply to the gentleman, with some restraint, I will say that God gives us liberty to associate with whom we will, as freemen; that the moment our associations are enforced upon us either in religion, or in any other sphere in which the citizen is by nature free, that that moment that law of God is violated. That is the doctrine, sir, of the Declaration of Independence. It is the doctrine of the founding fathers and it is not private with me or of recent discovery.

Mr. JENNINGS. I heard most of your statement. I do not construe what you said to get into the domain of this antilynching proposal.

Dr. GRIFFITH. I had nothing to say about that.

Mr. JENNINGS. I interpreted that you meant you had the right to pick your own society, the people with whom you would associate, and that you have a right to hire a man or not to hire him and I agree with you about that. You talk about the sanctity of contract. If a man has not the right to pick the people with whom he contracts, there is no such a thing as the right of a contract; and it would be an outrage upon the liberties of the citizen, in my opinion, for any governmental agency, or governmental bureau, to come snooping around me and tell me who I should hire and who I should associate with. That is my conception of a man's rights under the law, as an American citizen.

Mr. DENTON. What in this bill prohibits you from associating with anybody you want?

Dr. GRIFFITH. This bill purports to forbid or to make a wrongful act religious discrimination, the discrimination based upon religion——

Mr. DENTON. Where?

Mr. JENNINGS. I would say generally that the law is designed ultimately to afford the protection to people from a religious standpoint who do not need it and do not want it. I have lived in a county of 300,000 people and there is a very small percentage of those people of the Catholic faith. We have not got any prejudice at all against anybody that belongs to any church; that is demonstrated by the fact that one of the eminent judges of our trial courts, one of our circuit courts,

Mr. John M. Kelly, is a devout Catholic. He is elected by Protestant votes. And we have another Catholic judge, judge of another one of our courts. We are preponderantly Protestant but we have not any religious prejudice; and we elect Jews. There are about 5,000 Jews in the town of 300,000, or 230,000 people, and they are elected from the city at large to city office. We have not any prejudices down there and our Jews do not need any protection. They can take care of themselves everywhere in the world, nearly. They set up a nation in the teeth of the Mohammedan world and set the finest example of resolute, independent, and individual bravery that the world has witnessed in the last 50 years, and I do not think our Catholics and our Jews need any protection.

We do not have any trouble with our colored folks. Fine citizens. I have been in the homes of some of them that own $10,000 homes. They are respectable, fine citizens. They sit on juries. I tried a case before a jury that had a fine, retired civil-service post office employee who had retired on account of physical disability. He was on that jury. I was glad to have him. He decided a lawsuit in my favor, along with others, too. I have had lots and lots of lawsuits before colored juries. We get along down there. We understand one another.

I believe it would be a good idea for some of these busybodies to let us alone.

Dr. GRIFFITH. Mr. Chairman, I would like to make it clear that my ideal for the future of the United States as soon as it can possibly be achieved, everywhere, is for every American to consider every other American as a human being possessed of all the rights, privileges, which belong to a human being because he is a human being. What I am objecting to in this law, and in the whole complex of laws of which this is a part, notably FEPC, is the attempt to do something which is, as an ideal, good, in such a way that it will first be done, I think, unconstitutionally, and secondly, in such a way as will prevent rather than advance the professed objective of the law.

Now, sir, in answer to the question of the gentleman here about where I found that in the law, it is on page 2 of H. R. 4682, section 2 (b):

> The Congress, therefore, declares that it is its purpose to strengthen and secure the civil rights of the people of the United States under the Constitution, and that it is the national policy to protect the right of the individual to be free from discrimination based upon race, color, religion, or national origin.

Now, those words sound noble. In effect, as I have tried to say, they are prohibitory of the free exercise of religion rather than in any sense guaranteeing it.

Mr. DENTON. What in the act does that? On page 13, in two places—now, is that the preamble you are talking about there used to construe the other parts of the bill?

Dr. GRIFFITH. That is what I was doing with it. The right of protection from——

Mr. DENTON. By reason of race, color, religion, or national origin. There is nothing in the Constitution to protect that right anywhere. Is that not within the power of Congress to protect that right in the Constitution?

Dr. GRIFFITH. Person and property. But the first part of this act which is to be used to construe it does not make any such distinction at

all; nor is any such distinction made in the FEPC legislation. It is all part of a whole process.

Mr. DENTON. That is what I know. You are talking more about FEPC than anything else.

Dr. GRIFFITH. I would not say so, sir. I could talk about that at considerable length and say many things which I have not said here.

Mr. DENTON. Prohibited from discrimination on account of race, religion, and so forth. The courts have upheld that right many times. There are many cases on that, are there not? There are a good many cases by the courts upholding that right? Congress prohibited discrimination on interstate carriers, did it not?

Dr. GRIFFITH. This, of course, would extend it to intrastate; that is one point on which I do not think it would be constitutional.

Mr. KEATING. Where does it say that?

Mr. FOLEY. The carrier? No. All persons—you read that section 221.

Dr. GRIFFITH. I am reading section 212.

Mr. FOLEY. You talk about public carriers.

Mr. DENTON. It is on page 17.

Mr. FOLEY. The title to it is, "Prohibition Against Discrimination or Segregation in Interstate Transportation."

Dr. GRIFFITH. If you look on page 15, you will find that it does apply intrastate.

Mr. KEATING. Transportation?

Mr. FOLEY. That treats of voting in Federal elections on page 15.

Mr. JENNING. Well, do not the fourteenth and fifteenth amendments pretty well take care of the right of a citizen without any regard to color, whether he is affiliated with some church or just belongs to the Big Church—no church—I never could understand how anybody would get mad about their religion because I never saw anybody. Yet I have seen a few that were thoroughly saturated with it, but I never saw anybody with enough of it to hurt him. They have not been saturated with it. But it seems to me that as against State encroachment, the fourteenth amendment takes care of the citizen. You cannot be deprived of life, liberty, or property, without due process of law by the State. And the Federal Government is forbidden to deprive the citizen of life, liberty, and property without due process of law.

In other words, those first 10 amendments, and the thirteenth, fourteenth, and fifteenth amendments, were adopted to take care of the freed former slaves, cover the citizen all over with the law, with the armor of the law with respect to his property rights, life, and his liberty.

I never have been able to bring myself to the point of view to say that the Federal Government or any other government is clothed with the right or onerated with the duty of seeing that somebody shall hire me as a lawyer instead of Mr. Denton over there, if he was my neighbor. I might have a neighbor who might say, I would rather have Mr. Denton. I don't like Jennings anyhow, but I like Denton and I think he is a better lawyer. Now, what right have I got to go into court and say, here, I am not being treated fairly. I am not getting the business I think I ought to have. The fact of the matter is that I have never seen anybody, white or yellow or any other color,

who was industrious and competent and trustworthy, that was discriminated against because of their color, religion, or political affiliations, or anything else.

If it gets out on the fellow that he is a good worker and to be trusted and is competent, people search him out—like the fellow who built the best mouse trap or chicken coop, or wrote the best book. If he builds his house in the middle of a forest, the world will make a beaten path to his door. That is my idea about seeing people get along. It is just a question of how good they are and how honest they are, and how industrious they are. People hunt them up.

Dr. GRIFFITH. Because of what you have just stated, because it does reflect the basic philosophy which underlies our opposition to the bill, may I say this: That so long as we consider people as groups, or minorities, and not simply as individuals, as human beings, so long we are going to have the problems which legislation such a this tries to meet but which legislation never will meet.

Mr. JENNINGS. How far would you get by enacting a statute, enacting into statute the Golden Rule, and the Sermon on the Mount? It would never have the appeal it has now. If you embodied them under a statute and undertook to enforce them, what appeal would they have? You cannot legislate good will into people's hearts.

Dr. GRIFFITH. Some of this legislation would apparently make it mandatory to love they neighbor as thyself. That is a thought we ought to all have as Americans, but I do not think we ought to do so because the Federal Government tells us to.

Mr. JENNINGS. Let me give you the finest example of good neighborliness, the Golden Rule in action. There was a man in west Tennessee named Emerson Etheridge, a marvelous orator. At the close of the Civil War, he was looked at askance and ostracized, in a way, by a lot of his fellow citizens because he was outstanding in his championship of the rights of the freed former slaves. He came up to the town where I lived in a section of east Tennessee where there were but few slaves and people all went in the Union Army except one great uncle, and he waited until a bunch of Rebels came along and he went with them because he soldiered with them in the Mexican War and wanted to fight alongside the Southerners; all the brothers were in the Union Army.

This man Etheridge came up there, this great orator, to make an oration at the laying of the cornerstone of the courthouse. The old courthouse was burned. And he referred to the fact that he had been ostracized, so to speak, by many of his fellow citizens down there in the section of Tennessee where he lived. He said in reply to that, reference to his championship of the rights of the colored people, "'When God Almighty stamped in the face of a fellow human being the image of immortality, I hale him as a brother."

Now, with that spirit among all races, you will get that spirit of good will, that spirit of the Golden Rule, that philosophy of human life expressed in the greatest sermon ever preached that would ameliorate these conditions and then through the processes of education, applied Christianity and evolution, you will get away from these embitterments and strife that a lot of people thrive on, make a living out of it, just like the witches that stood around the cauldron in Macbeth—want to raise hell, and brew a broth that will raise hell on

earth. That is my idea about it; I may be wrong. Just my home-made philosophy on how to get along with your fellow man.

Dr. GRIFFITH. You have said much better than I was able to say what was in my own heart. I think that legislation such as this will defeat that purpose, and I think that the only way it can be achieved is by the infection of the attitude that you have expressed, which I wish were shared by every American.

Mr. BYRNE. We thank you, Dr. Griffith.

Mr. KEATING. May I ask one question to be sure that I understand the position of the witness?

Do I understand that you dispute the language in lines 10 to 12 of page 3, that it is the national policy to protect the right of the individual to be free from discrimination based upon race, color, religion, or national origin?

Dr. GRIFFITH. Yes, sir; for the reasons stated in my prepared statement, and please do not draw your conclusion as to the validity of what I say to you now without having read it.

Mr. BYRNE. That is all right.

Is there anyone else now that wishes to testify at this time?

Mr. FOLEY. I believe there is nobody else, Mr. Chairman.

(The following statements were submitted for the record:)

STATEMENT OF REPRESENTATIVE HELEN GAHAGAN DOUGLAS ON ANTILYNCHING BILL H. R. 795 AND OTHER BILLS PERTAINING TO ANTILYNCHING

Mr. Chairman, I am grateful for this opportunity to appear before this committee to speak in favor of a strong antilynch bill.

In the last few years, with the number of lynchings diminishing—whether through the threat of Federal legislation or the increasing public disapproval and abhorrence—we have been lulled into a false sense of security.

That sense of security must have been rudely shaken by what happened in Birmingham, Ala., during this very month in which this committee has been holding hearings on antilynching legislation.

In the last 3 weeks, the newspapers all over the country have been filled with headlines that cause one's hair to stand on end: "Hooded Men Slug Woman, Burn Crosses"; "Masked Mob Beats Miner in Fourth Alabama Attack"; "Hooded Mob Prowls in Alabama"; "Hoods Flogged Them, Women Say"; "Five Alabama Investigators Join Search for Men Who Hit Birmingham Woman"; "Alabama Mother of Five Told Klan Is Coming to See You."

Now, mind you, this is mob violence not against a minority because of dark skin—in most cases the victims happened to be white. It is not against men alone—women, including a grandmother, were flogged and intimidated. It is not against strong able-bodied persons—a crippled miner was dragged from his home.

This is mob violence against any person or persons, any minority who happens to offend the majority for any reason whatever.

It is an attempt on the part of the majority to inflict its will on a minority through the weapon of intimidation. That is the ever-increasing danger to our democracy.

The increase in Klan activity in the last few months has grown to such proportions that the Washington Times-Herald on June 2, 1949, was moved to write one of the strongest editorials on lynching that I have read—"It's Murder":

"Lynchers are worse murderers than anyone they ever shoot, burn, drown, or hang—because they not only murder a man, they murder the law, without which none of us can live together in peace.

* * * * * * *

"So far, southerners have fought successfully to prevent Federal anti-lynch and civil-rights measures from being passed. They have some reason on their side, and there are many nonsoutherners who agree with them that the Central Government should be kept out of State affairs as much as possible.

"But this country—North and West and good citizens of the South, too—will not forever stand for the murder called lynching."

I would like, at this point, to include my testimony of last year.

"Where a society permits private and arbitrary violence to be done to its members, its own integrity is inevitably corrupted. It cannot permit human beings to be imprisoned or killed in the absence of due process of law without degrading its entire fabric." (From the report of the President's Committee on Civil Rights.)

I hope this committee will report favorably legislation to strengthen the hand of the Federal Government in the protection of civil liberties

The President, in his statement accompanying his Executive order, December 5, 1946, stated.

"The preservation of civil liberties is a duty of every government—State, Federal, and local. Wherever the law-enforcement measures and the authority of Federal, State, and local governments are inadequate to discharge this primary function of government, these measures and this authority should be strengthened and improved

"The constitutional guaranties of individual liberties and of equal protection under the laws clearly place on the Federal Government the duty to act when State or local authorities abridge or fail to protect these constitutional rights.

"Yet in its discharge of the obligations placed on it by the Constitution, the Federal Government is hampered by inadequate civil-rights statutes The protection of our democratic institutions and the enjoyment by the people of their rights under the Constitution require that these weak and inadequate statutes should be expanded and improved. We must provide the Department of Justice with the tools to do the job."

In the Seventy-ninth Congress, I introduced a Federal antilynching bill

On January 10, 1047, I introduced a Federal antilynching bill.

On May 26, 1947, I introduced H R. 3618, a Federal antilynching bill.

On January 5, 1949, I introduced H. R. 795, which, if passed, will permit the Federal Government to aid the States in the complete suppression of mob violence.

The principal provisions of my bill are briefly these:

1. The right to be free of lynching is declared to be a right of American citizenship.

2. Lynching is any violence to person or property by a mob (an assemblage of two or more persons), (a) because of the race, color, religion, creed, national origin, ancestry, or language of the victim, or because (b) the victim was suspected, accused, or convicted of a criminal offense

3. Any violence by a lynch mob shall constitute a lynching. The victim does not have to die in order to be "lynched" within the meaning of the bill. Any injury is sufficient.

4. Members of the lynch mob, or any person who aids or incites the mob, are made punishable by a maximum imprisonment of 20 years or a maximum fine of $10,000, or both.

5. Dereliction on the part of State officers charged with responsibility of protecting the victim or apprehending the lynchers is made punishable by a maximum imprisonment of 5 years or a maximum fine of $5,000 or both.

6. Every governmental subdivision of the State which willfully or negligently permits an individual to be seized, abducted, and lynched is made liable to the lynched, if he lives, for monetary compensation for injury of $2,000 to $10,000, or, if he is killed, to his next of kin.

7 All criminal prosecutions under the act would be brought in a Federal district court.

Since 1882, there have been 4,718 known lynchings. Persons have been lynched for nearly every reason. The offense of victims has ranged from the alleged commission of criminal acts to the failure to call another "mister."

Persons have been lynched for no reason other than they were members of unpopular races, or held or advocated beliefs or creeds unpopular in the immediate community.

The bodies of these hapless victims have been subjected to every conceivable kind and manner of torture and mutilation.

Lynching is usually associated exclusively with the Negro and thought of as occurring only in Southern States. This is not the case.

There have been lynchings of the white man as well as the Negro.

There have been lynchings in the North as well as the South.

There have been lynchings in Western States, Eastern States, and Mountain States.

According to the World Almanac, 1948, between 1882 to 1946, there were 4,716 known lynchings in the United States; 3,425 of these lynchings were Negro, 1,291 were white.

The number of lynchings by States from 1882 to 1946 follows:

State	White	Negro	State	White	Negro
Non-Southern States			Non-Southern States—Con		
Arizona	29	0	Pennsylvania	2	6
California	41	2	South Dakota	27	0
Colorado	66	2	Utah	6	2
Delaware	0	1	Washington	25	1
Idaho	20	0	Wisconsin	6	0
Illinois	14	19	Wyoming	30	5
Iowa	17	2	Southern States		
Kansas	35	19	Alabama	47	299
Indiana	33	14	Arkansas	59	226
Michigan	7	1	Florida	25	256
Minnesota	5	4	Georgia	38	487
Missouri	51	71	Kentucky	64	141
Montana	82	2	Louisiana	56	335
Nebraska	52	5	Virginia	16	83
Nevada	6	0	Maryland	2	27
New Jersey	0	1	Mississippi	41	533
New Mexico	33	3	North Carolina	15	84
New York	1	1	South Carolina	4	155
North Dakota	13	3	Tennessee	47	203
Ohio	10	16	Texas	143	346
Oklahoma	82	41	West Virginia	21	28
Oregon	20	1			

Between 1900 and 1946 there were 1,967 known lynchings, 193 white and 1,780 Negro.

In 1947 there was only 1 known lynching, but there were 31 attempted lynchings.

In 1948 there was one generally recognized lynching but there were many border-line cases, among them the case of a war veteran killed by a mob because he dared to vote.

The lynch spirit still lives.

So long as any one individual is lynched or stands in fear of lynching, it seems to me, the duty of the representatives of the people is clear.

Justice that is discriminatory is not justice at all.

We have come very far in building an equitable society.

The belief that all men are equal and that there are certain inalienable human rights of security and freedom which the Government must guarantee for all has been a constant challenge to us as a people—gathered as we are from all parts of the earth with differences in language and custom and representing every race, color, and creed.

If today we still have discriminations and prejudices resulting in mob violence—they are not products of, but rather challenges to—the American way of life.

I think we should meet this challenge by the prompt passage of a Federal antilynching bill.

The Gallup poll of July 2, 1947, inserted in the Congressional Record, July 8, 1947, shows that the majority of the people of the United States, in the North and South, want antilynching legislation.

An antilynching bill is not only of importance nationally but internationally. Let us not forget that lynching is not on a violation of the fourteenth amendment to the Constitution which guarantees justice and equality before the law for all citizens, but it is a violation of the law of nations.

The United Nations Charter, to which we are not only a party but which we helped write, states in articles 55 and 56:

"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

"All members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in article 55."

Every lynching and every deprivation of human rights, on the basis of race, creed, or color in the United States, does incalculable damage to our prestige and moral leadership in world affairs.

The report of the President's Committee on Civil Rights has this to say on the subject:

"Our position in the postwar world is so vital to the future that our smallest actions have far-reaching effects We have come to know that our own security in a highly interdependent world is inextricably tied to the security and well-being of all people and all countries Our foreign policy is designed to make the United States an enormous, positive influence for peace and progress throughout the world We have tried to let nothing, not even extreme political differences between ourselves and foreign nations, stand in the way of this goal. But our domestic civil-rights shortcomings are a serious obstacle.

"In a letter to the Fair Employment Practices Committee on May 8, 1946, the Honorable Dean Acheson, then Acting Secretary of State, stated that:

"'* * * the existence of discrimination against minority groups in this country has an adverse effect upon our relations with other countries We are reminded over and over by some foreign newspapers and spokesmen, that our treatment of various minorities leaves much to be desired While sometimes these pronouncements are exaggerated and unjustified, they all too frequently point with accuracy to some form of discrimination because of race, creed, color, or national origin Frequently we find it next to impossible to formulate a satisfactory answer to our critics in other countries, the gap between the things we stand for in principle and the facts of a particular situation may be too wide to be bridged An atmosphere of suspicion and resentment in a country over the way a minority is being treated in the United States is a formidable obstacle to the development of mutual understanding and trust between the two countries. We will have better international relations when these reasons for suspicion and resentment have been removed'"

The lynching of Willie Earle in South Carolina, and the subsequent acquittal of the confessed lynchers evoked this type of response in London

Daily Express "Trial by fury * * * remains the unwritten law of America's South"

The Daily Mail said that the freeing of the lynchers revived "America's No 1 problem—that of the attitude of the white to the Negro population"

Such news stories completely ignore the progress made

At the time of the Emancipation Proclamation, 90 percent of the Negroes couldn't read and write The Federal Census of 1940, showed that 18 out of 20 Negroes were literate.

Many States have moved toward complete equalization of educational opportunities. In the last 25 years, registration of Negro college students has increased 2,400 percent.

We find Negroes today in high Government positions—as judges in our courts, as leaders in industry, science, and government

But this is not the story that makes news around the world

People look to us as a land of freedom. They expect to find here justice, freedom, and equal opportunity.

It is just at that point where we fall short of achieving our ideals that our international prestige is undermined

The Army which is charged with the defense of the Nation has this to say about prejudice which is the root cause of the kind of thinking which results in private and arbitrary violence:

QUOTE FROM ARMED FORCES TALK, DEPARTMENT OF THE ARMY

"Prejudice Endangers World Peace: The success of the United Nations and its aim of world peace and security depends a great deal upon how the United States solves its internal problems. The smaller nations of the world look to the United States for leadership. We cannot afford to lose their confidence

"Three-fourths of the people of the world are what we call 'colored' These people naturally look to the treatment of our colored citizens to see what we really mean when we speak of democracy Racial and religious prejudice alienates the confidence of the vast nonwhite populations as well as other peoples,

thwarts their hopes and our hopes of peace and freedom, and ultimately creates the conditions from which future global wars can develop.

"How we treat minorities is, therefore, more than a matter of mere domestic concern. The mistreatment of some Mexicans in the United States echoes throughout North and South America; a race riot provokes discussions and resentments in Africa, the Philippines, and among the 800,000,000 nonwhite people in China and India.

"Throughout the world there are millions of people who believe that World War II was a total war against fascism and Fascist ideas. Their concept of peace includes the hope—even the determination—that there will be no such thing as 'superior' and 'inferior' peoples anywhere in the world

"The story of America is proof that there are no 'superior' or 'inferior' people Our country has been made great by people who came from every land under the sun."

I urge this committee to vote out effective antilynching legislation to keep faith with our own time-honored democratic tradition and with the young and growing United Nations.

With the committee's permission I should like to include several clippings from newspapers to which I made reference in the above.

(The clippings referred to are held by the committee as exhibits.)

STATEMENT OF THE AMERICAN JEWISH COMMITTEE IN SUPPORT OF THE PROPOSED CIVIL RIGHTS ACT OF 1949

The American Jewish Committee wishes to record its endorsement of the proposed Civil Rights Act of 1949, H R. 4682, sponsored by Mr. Celler; and S 1725, sponsored by Senator McGrath

Since the American Jewish Committee was created by act of the New York State Legislature in 1906, it has sought to prevent infractions on the civil and religious rights of Jews and to expand and safeguard the civil and constitutional rights of all the inhabitants of our country. It has done so on the premise that an invasion of the rights of any American is a threat to all Americans

On May 1, 1947, Dr John Slawson, executive vice president of the American Jewish Committee, testified before the President's Committee on Civil Rights He made several recommendations to strengthen and expand civil rights in the United States These recommendations were substantially included in the report of the President's committee, To Secure These Rights The American Jewish Committee is happy to see many of them now incorporated in the administration's civil-rights bills introduced by Mr. Celler and Senator McGrath.

I ESTABLISHMENT OF A PERMANENT CIVIL RIGHTS COMMISSION

The President's Committee on Civil Rights stated: "In a democratic society, the systematic critical review of social needs and public policy is a fundamental necessity. This is especially true of a field like civil rights, where the problems are enduring and range widely. From our own effort we have learned that a temporary sporadic approach can never finally solve these problems." (To Secure These Rights, 154)

Just as the Council of Economic Advisers, established by the Employment Act of 1946 (60 Stat. 24) fulfills a critical need for periodic and authoritative appraisal of national economic developments, so the President and the Nation need the advice and guidance of qualified specialists to review progress and appraise activities in the civil-rights field.

The President's Civil Rights Committee discovered "huge gaps in the available information about the field" and urged the establishment of a permanent commission to collect and collect data, to make periodic audits of the status of civil rights, and to serve as a clearinghouse and coordinating agency for the thousands of private, State, and local agencies working in this area

The interest and concern of the American people in this subject is great; the fact that over 1,000,000 copies of the report of the President's committee were distributed is ample evidence of that interest During the last few years there has been a truly astounding growth of official and private committees on unity, race relations councils, civil-rights committees, and other organizations concerned with eliminating the tensions and conflicts in our society, and increasing the harmony and understanding with which people live together.

At present, however, there does not exist a single agency of Government to coordinate and evaluate the programs of these many local groups, which involve the interest, time, and effort of several million people.

Under the proposed legislation, a permanent Civil Rights Commission consisting of five per diem members, appointed by the President by and with the advice and consent of the Senate, would be established in the executive branch of the Government. The Commission would be directed to gather authoritative information concerning the status of civil rights. It would appraise policies and programs of Federal, State, and local governments and the activities of private individuals and organizations in the civil-rights field. It would report annually or more frequently, if necessary, to the President.

The American Jewish Committee believes, however, that to do an effective job in this field, the proposed Commission should have certain powers not specified in these bills: The power to hold public hearings, to subpena witnesses, to administer oaths, and in other respects to gather evidence.

While it is true that the Commission could make a significant contribution to the field of civil rights without the power to gather unwilling evidence, it is equally clear that its contribution could be more significant if the Commission could also gather and evaluate evidence from unwilling source of information. The American Jewish Committee therefore recommends the amendment of S. 1725 and H. R. 4682 to vest these desirable powers and authorities in the Commission on Civil Rights In this respect S. 1734, sponsored by Senator Humphrey, is a more effective bill and the attention of this committee is respectfully called to sections 5, 6, and 7 of Senator Humphrey's bill for the type of provisions that the American Jewish Committee would like to see incorporated in H. R. 4682 and S. 1725.

II. REORGANIZATION OF THE CIVIL RIGHTS ACTIVITIES OF THE DEPARTMENT OF JUSTICE

In urging that the Civil Rights Section be raised to full divisional status in the Department of Justice, the President's Civil Rights Committee said: "We believe this step would give the Federal civil-rights enforcement program prestige, power, and efficiency that it now lacks" (To Secure These Rights, 152).

The Civil Rights Section of the Department of Justice established in 1939 by the then Attorney General (now Mr. Justice) Murphy, has at no time in its ten year history had as many as a dozen attorneys and professional workers on its staff. In fact, in this respect, the section is smaller than the civil rights divisions of a number of private agencies interested in safeguarding and expanding civil rights.

Without any independent investigative staff and without any public educational campaign to inform people of its existence and functions, the Civil Rights Section had received nearly 70,000 complaints charging violation of civil rights between 1939 and January 1, 1947. The Section had instituted 178 legal actions and had obtained 101 convictions (Clark, A Federal Prosecutor Looks at the Civil Rights Statutes (47 Col. Law Rev., 175, 181 (1947)).

The lack of size and status of the Civil Rights Section results in excessive caution in instituting cases and in frequent submission to the pressures and prejudices of local enforcement agencies. The Section has been compelled to pick and choose cases to be prosecuted, not on the basis of whether or not a Federal crime has been committed or the prosecution is likely to deter other would-be violators but on the basis of whether an "air-tight" case can be presented to the jury (Car, Federal Protection of Civil Rights, 129). While the American Jewish Committee does not urge the wholesale prosecution of alleged violators of our Federal civil rights statutes, it firmly believes that many clear violations go unpunished because the Civil Rights Section of the Department of Justice is not adequately equipped to investigate and prosecute wrongdoers.

Federal prosecution, even when it fails to convict, has a salutory effect. The use of the criminal sanction as a deterent for the population at large is perfectly illustrated by the technique of the Treasury Department which refers selected cases to the Department of Justice for prosecution. The Treasury Department does not wait for the "perfect cases." It refers those cases likely to encourage compliance with the law by the more than 100,000,000 taxpayers.

In addition, prosecution of civil rights cases, whether or not conviction results in 100 percent of the cases undertaken, would publicize the fact that the Department of Justice protects citizens against the invasion of their Federal rights by

autocratic, bigoted or vicious local authorities who sometimes break and incite others to break the very laws which they swear to uphold.

Another effect of the lack of size and prestige of the Civil Rights Section is the tendency to look to State and local enforcement authorities to prosecute civil rights violations under State statutes whenever possible. Violations of Federal civil rights laws are generally also violation of State statutes. However, civil rights cases, by their very nature are those in which the victim often enjoys little standing in the community (the Negro in the South, Jehovah's Witnesses in New England, Japanese-Americans on the west coast, or Mexican-Americans in the southwest). Local and State officials are loath to prosecute unpopular causes in their communities. Although the difficulty of securing an indictment or conviction is the same whether the jury, composed of local citizens, sits in the State or in the Federal district court, the Federal prosecutor is not as amenable to local pressure and prejudice as is the State prosecutor.

The Civil Rights Act of 1949 would raise the Civil Rights Section of the Department of Justice to the status of a division (of equal rank with the Claims Division or the Antitrust Division or the Lands Division) headed by an Assistant Attorney General. This division would concern itself with "all matters pertaining to the preservation and enforcement of civil rights secured by the Constitution and laws of the United States." In addition, the personnel of the Federal Bureau of Investigation would be increased and trained to the extent necessary to enable it efficiently to conduct investigations of civil rights cases.

Such a division with the specialized knowledge and experience required to prepare and present civil-rights cases would greatly strengthen the hand of the Federal Government in dealing with civil rights. Such a division would be equipped to cope with the difficulties which arise in all stages of a civil-rights case—selection of the appropriate case, investigation of the facts, securing an indictment and presentation to the court and jury (Carr, Federal Protection of Civil Rights, 121, 150)

In connection with training FBI agents to handle civil-rights cases, the President's Committee on Civil Rights said: "The creation of such a unit of skilled investigators would enable the FBI to render more effective service in the civil-rights field than is now possible. In some instances, its agents have seemingly lacked the special skills and knowledge necessary to effective handling of civil-rights cases, or have not been readily available for work in this area" (To Secure These Rights, 153).

With all due credit to the FBI for its remarkable successful record, the President's committee found that upon occasions investigations in the very difficult and highly specialized area of civil rights have not measured up to the Bureau's high standard. Apparently the FBI has sometimes found it burdensome and difficult to undertake the numerous civil-rights investigations requested by the Civil Rights Section. Investigations have not always been as full and as thorough as the needs of the situation warranted. FBI investigations are also occasionally handicapped by the tendency of the Bureau to work closely with local police officers who might themselves be under suspicion. In several cases, victims and witnesses, often weak or frightened people, have been unwilling to cooperate with Federal agents known to work closely with police officers (To Secure These Rights, 123).

III. ESTABLISHMENT OF A JOINT CONGRESSIONAL COMMITTEE ON CIVIL RIGHTS

The President's Committee on Civil Rights said: "A standing committee, established jointly by the House and the Senate would provide a central place for the consideration of proposed legislation" (To Secure These Rights, 155).

Through such a joint committee, Congress would establish and maintain continuous liaison with the Civil Rights Commission in the executive branch and would develop expertness in evaluating and drafting legislative proposals to deal with the complex and intricate problems in the field of civil rights.

An enormous and growing number of civil-rights bills are introduced into the congressional hopper each year. Some of the bills are sound, others are unsound; some are necessary, others are probably unessential. A standing committee of Congress to which all civil-rights bills could be referred would quickly develop the knowledge and expertness necessary to separate the sound from the unsound, the essential from the unessential.

The Civil Rights Act of 1949 would establish a joint committee consisting of seven Members of each House to make "A continuous study of matters relating to civil rights including the rights, privileges, and immunities secured and protected by the Constitution and the laws of the United States" The joint committee would be empowered to make the investigations necessary to guide Congress in enacting sound civil-rights legislation.

IV. AMENDMENTS AND SUPPLEMENTS TO EXISTING CIVIL-RIGHTS STATUTES

The President's Committee on Civil Rights recommended strengthening the existing civil-rights statutes in title 18 of the United States Code in the following respects:

A Section 241 (conspiracy statute) should not be limited to "citizens" and should impose the same liability on one person as is now imposed on two or more conspirators (To Secure These Rights, 156);

B. Section 242 (abuse of authority statute) should be amended to bring its penalty provisions into line with those provided in section 241 (ibid. 156);

C. A new statute should be enacted to supplement section 242 to enumerate the rights, privileges, and immunities covered by section 242 (ibid. 157); and

D The archaic Anti-Peonage Act should be strengthened and modernized (ibid. 158).

The civil-rights statutes now available to the Department of Justice are remnants of post-Civil War legislation, and properly need revision to bring them up to date The weaknesses of section 241 have long been known It is a conspiracy statute which cannot be used to prosecute offenders who act alone. It specifies "citizens" and therefore offers no protection to noncitizens. Since no civil proceeding is available to the Government in cases arising under section 241 resort must be made to the cumbersome and generally unsatisfactory criminal prosecution.

The Civil Rights Act of 1949 would amend title 18 of the United States Code in the following respects:

Section 241 would be broadened to include all "inhabitants of any State, Territory, or District" Action by any person which "injures, oppresses, threatens, or intimidates any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States" would also be made a Federal crime Increased punishment would be provided if the illegal acts caused the death or maiming of the person wronged Furthermore an action in the Federal district court for civil damages or for an injunction would be available to the injured party, in addition to the criminal penalty which is the only existing sanction.

The amendments proposed under the Civil Rights Act of 1949 would strengthen section 241 and clarify it. Notwithstanding the constitutional limitations on section 241 (*U. S. v Cruikshank*, 92 U S. 542 (1875)) and its need for modernization, the section has been found useful in prosecuting violations of civil rights. It has been held to extend to cases of interference with voting in Federal elections (*U. S v. Saylor*, 322 U. S. 385 (1944)), intimidation of Federal witnesses (*Foss v. U. S.*, 266 Fed 881 (CCA 9th 1920)), violence against Federal officers (*U. S. v Davis*, 103 Fed 457 (C C W D Tenn 1900)), and violence against persons in the custody of Federal officers (*Logan v. U S*, 144 U. S 263 (1892)). In addition, section 241 provides a criminal sanction for Federal laws, such as the Homestead Act, which lack penal provisions Obviously its future usefulness would be considerably enhanced by the amendments proposed in the Civil Rights Act of 1949.

Section 242, like section 241, would be amended to increase the punishment if the illegal acts cause the death or maiming of the person wronged

A new section 242A is added to list the "rights, privileges, and immunities" covered by section 242

Section 1583 (the Anti-Peonage Act) is modernized to include the act of enticing any person "on any means of transportation" to any place within or beyond the United States with the intent that he be made a slave

The existing weaknesses of section 242 and the desperate need for the proposed section 242A were revealed in the case of *Screws v. U. S* (325 U S. 91 (1945)). In that case a Georgia sheriff arrested a Negro without justification and beat him to death. When the Justice Department was unable to persuade the State authorities to act it instituted prosecution under section 242 of title 18 and secured a conviction, which was affirmed by the circuit court of appeals (*U S. v. Screws*, 140 Fed. 2d 662 (C C A. 5th, 1944))

The case was appealed to the United States Supreme Court and reversed. The majority opinion of the court exposed the weakness of section 242 by pointing out that since this statute makes certain types of willful conduct a crime it must

expressly state those rights, the deprivation of which under color of law constitutes a violation. Under the existing statute a defendant, claiming that he intended a simple assault and not a deprivation of any constitutionally protected right of the victim, places a grievous burden on the prosecution to sustain a conviction under section 242.

Section 242A, which would be added to title 18 of the United States Code by the Civil Rights Act of 1949, would cure this defect in section 242 by explicitly listing the rights, privileges, and immunities of which a victim may not be deprived under color of law. It would put police officials on notice that violation of any one of the enumerated rights would subject them to Federal prosecution under section 242.

With the proposed amendments to these statutes and the modernization of the Anti-Peonage Act, all of which have been upheld as constitutional (*U. S.* v. *Mosley*, 238 U. S. 383 (1915)); *U. S* v. *Classic*, 313 U. S 299 (1941); *U S.* v. *Gaskin*, 320 U. S. 527 (1944)), the Department of Justice's "quest for a sword" to protect the civil and constitutional rights of our inhabitants would at last be satisfied.

V. PROTECTION OF THE RIGHT TO POLITICAL PARTICIPATION

The President's Committee on Civil Rights recommended: "The enactment of statutes to protect the right of qualified persons to participate in Federal primaries and elections against interference by public officers and private persons and against discriminatory limitation based on race or color or other unreasonable classifications" (To Secure These Rights, 160, 161).

The President's committee also suggested amendments to authorize the use of civil sanctions by the Department of Justice (ibid. 160)

The Civil Rights Act of 1949 would accomplish these purposes by amending two existing statutes (18 U. S C. 594 and 8 U. S. C. 31) and by the addition of a new section (sec. 213 of the proposed act). The American Jewish Committee heartily endorses these amendments and additions to the existing statutes.

We are particularly pleased with the provision of section 213 which would authorize the Attorney General to bring an action in the Federal district courts for an injunction or other preventive relief. This provision would enable the Department of Justice to enjoin illegal interference with registration and voting and enable the intended victim to exercise his constitutionally granted right to cast a ballot for his Federal representatives

Under the existing statutes, the only available remedy is criminal prosecution. Victims are deprived of their right to cast a ballot by various techniques of fraud and terror. Large segments of our population have no voice in the selection of Federal officers. The deprivation is a fait accompli and the persons responsible are generally not prosecuted or, if prosecuted, are not convicted because, according to the findings of the President's Committee on Civil Rights, the penalty is deemed too stringent by both prosecutors and juries.

The proposed additions would make available to both the injured party and the Attorney General, a speedy remedy which could be effectively used to enable the intended victim to register and vote at the proper time. No jury would be involved since no criminal penalty would be sought. Local prejudice would be unlikely to enter into the case The use of the injunction to prevent interference with civil rights is a recently developed technique which, in the opinion of the American Jewish Committee, holds considerable promise for effective protection of the rights of minority groups.

VI. PROTECTION AGAINST DISCRIMINATION OR SEGREGATION IN INTERSTATE TRANSPORTATION

The President's Committee on Civil Rights recommended: "The enactment by Congress of a law prohibiting discrimination or segregation, based on race, color, creed, or national origin, in interstate transportation * * * to apply against both public officers and the employees of private transportation companies" (To Secure These Rights, 170).

The Civil Rights Act of 1949 would clearly accomplish this purpose.

In *Morgan* v. *Virginia* (328 U. S. 373 (1946)) the Supreme Court ruled that State statutes requiring racial segregation in transportation are not applicable to passengers in interstate commerce. That decision, however, does not affect the power of carriers to enforce racial segregation by their own rules and regulations.

The American Jewish Committee has repeatedly opposed discrimination and segregation based on race, religion, color, or national origin

We believe that segregation is an archaic remnant of a period of unenlightenment and ignorance and is always discriminatory.

We believe that segregation imposes a badge of inferiority just as clearly as did the infamous Nuremberg laws of the Nazi regime.

We believe that segregation in all forms and at all levels is a denial of the high ideals and principles on which our Republic was founded.

We believe that segregation, as practiced in many areas of American life, is a substantial handicap to our country in its foreign relations and we urge Congress to eliminate this practice in all areas where it has power to do so.

For all of these reasons, the American Jewish Committee wishes to record its strong support for H. R. 4682 and S. 1725, the Civil Rights Act of 1949—June 22, 1949.

STATEMENT BY THE NATIONAL CITIZENS' COUNCIL ON CIVIL RIGHTS TO SUBCOMMITTEE NO. 3 OF THE HOUSE COMMITTEE ON THE JUDICIARY ON H. R. 4682

Gentlemen, the principles embodied in the bill H. R 4682 are strongly supported by the members of our council The provisions under title II to amend and supplement existing civil-rights statutes, to protect the citizens' franchise, and to prohibit discrimination in interstate transportation are essential implementations of our Bill of Rights and Constitution. To ensure adequate enforcement of these provisions, the Civil Rights Section of the Department of Justice must be raised in status to a Division of the Department, properly staffed and headed by an Assistant Attorney General, as provided in part 2, title I.

The council has also publicly affirmed is support for the creation of a Joint Congressional Committee on Civil Rights, as provided in part 3, title I. On this point, we should like to call attention to the fact that Congress has used its investigatory powers to great effect in the past in many areas of our democratic interest Destructive forces which undermine our national welfare have been brought to light. Important as these areas of congressional study have been, none is more important than the protection of the civil rights of American citizens.

We appreciate the importance of all provisions in the bill now being considered by this committee as being necessary parts to a well-integrated program. It is our special study of the need for a permanent Federal Commission on Civil Rights which causes us now to place emphasis on this subject.

On December 15 of last year our council called together a group of experts in the fields of law, public administration, and civil rights for a series of deliberations on the subject of a permanent Federal Commission on Civil Rights. Those who were appointed to draft the conclusions of the conference included the following:

Herbert Mayard Swope, chairman of conference
Robert K. Carr, Dartmouth College
Robert E. Cushman, Cornell University
Milton Konvitz, Cornell University
Mrs. Sadie T. Alexander, President's Committee on Civil Rights
Channing Tobias, President's Committee on Civil Rights
Morris L. Ernst, President's Committee on Civil Rights
Ernest O. Melby, New York University
Louis Wirth, University of Chicago
Mrs. Ruth Bryan Rohde, former Minister to Denmark
Leo M. Cherne, Research Institute of America
Irving M Engel, American Jewish Committee
Benjamin R Epstein, Anti-Defamation League of B'nai B'rith
George Field, Freedom House
Thurgood Marshall, National Association for the Advancement of Colored People
Roger N Baldwin, American Civil Liberties Union

The testimony we present you is based on the wisdom of this group and carries the support of the members of our council, whose names are presented at the conclusion of this report.

It is our firm belief that not only America's internal strength, but her influence abroad, rest in large measure upon the vitality of our free institutions. The forces affecting the world today, to which these free institutions are inevitably linked, do not allow us the luxury of a laissez-faire approach to the safeguarding of our rights. We believe the United States must establish now a Commission on Civil Rights in the executive branch of the Federal Government

to maintain a continuous examination and report on its findings. An informed citizenry will then serve as the guardian of its own liberties

Let us examine the results of such an effort on American foreign relations:

We know two-thirds of the world's population is non-Caucasian. We make military and political agreements with these people; we do business with them Our position on the international round table is greatly weakened when the charge of hypocrisy can be leveled against us. As more and more peoples inhabiting backward areas of the world win their freedom, this problem will become increasingly acute. Propaganda emphasizing American weaknesses in civil rights may help to spell the difference on some occasions between new nations aligning themselves with the Soviet system or the American way of life Moreover, with new sources of energy constantly being revealed in our scientific laboratories, no one can judge properly what nations may in the coming few years develop into newer and greater world powers. We have no choice but to establish the friendliest possible relations with the freedom-loving peoples of the world This can best be performed by demonstrating through such action as establishing a Commission on Civil Rights that America means to narrow the gap between her professions and her practices and that she can be counted upon to perform by deed what she expresses by word.

Every lynching, every riot, every racial or religious disturbance has fed the Communist machine, operating in this country as abroad, with new material to exaggerate and broadcast to the world. Unfortunately, these tactics are not always ineffectual. With the recently expressed official Soviet anti-Semitism still fresh in the minds of people, we have a further opportunity to win a major battle in the war of ideas What better answer than, in the face of Soviet misdeeds, to set up an official agency of our Government charged with keeping a free people informed on the status of its own rights?

The record is clear. When we rob the Communists of their own best weapon by taking action on human rights ourselves, their position is immeasurably weakened The report of the President's Committee on Civil Rights, for example, met with indifference from the Communist press here and abroad In recent years human rights have become identified with both major political parties in this country, and the United States has subscribed to the United Nations' Declaration of Human Rights As a result, the Communists have abandoned their usual noisy and highly organized campaign for civil rights. These illustrations, more clearly than any theory, prove once again that America's best offense in the ideological war is the positive demonstration that through our free institutions we are cleaning our own house.

The establishment of a Commission on Civil Rights will be equally rewarding in its effect on the home front.

Democracy thrives on free expression and is best able to move forward when all aspects of questions are freely aired. All of us know that our enemies within abuse this freedom for the purpose of destroying democracy itself To the extent that we are ignorant of these threats or close our eyes to our own shortcomings, we are nuturing disease and eventual decay. Democracy never stands still, it can strengthen itself or it can fall back in lethargy. It must be our choice to keep our way of life vital and growing A Commission on Civil Rights would, as a primary function, continuously alert the American people to the challenges against human liberty from the extremist groups within our midst.

It is not implied that such a Commission would have policing powers or the right to certify or sanction We believe these are not properly the duties of such a Commission, but rest with the Department of Justice and with American public opinion. We do, however, believe such a Commission should have full powers to investigate and report its findings. In order to perform its task effectively, the Commission should have the right to hold hearings and subpena witnesses Without this power, information made available by the Commission would necessarily be based on incomplete evidence.

It is the belief of our council that whereas the powers of the Commission should be limited, its scope should be broad enough to encompass any activity in the area of civil rights of sufficient magnitude to threaten our democratic pattern. The Commission cannot be directed to concern itself with every violation of civil rights. If, however, a specific violation becomes multiplied under a particular set of circumstances or in a particular area to the extent that it threatens our democratic pattern, then an investigation into this type of violation might be a task of the Commission. By the same token, if a single violation, through the Nation-wide attention drawn to it, tends to influence other

persons to commit a similar violation, then an examination of this case might also be deemed appropriate by the Commission In all events the Commission should be free to examine any situation which might affect our national behavior or create abroad a false view of our institutions.

The rapid growth and enormous complexities of the American way of life have made it necessary to establish central bodies of information on many diverse facets of our activity It is our belief that a continuing compilation of information must now be established concerning our greatest heritage of all, human liberty

At the invitation of President Truman, a special committee of this Council visited the White House on January 12 to present our report on a permanent Federal Commission on Civil Rights Attending this meeting with the President were Robert P Patterson, Herbert Bayard Swope, Edward McGrady, Leo M. Cherne, Morris L Ernst, George Field, and Maurice S. Sheehy We are pleased to submit our report for the attention of this subcommittee as well as a list of the members of the National Citizens' Council on Civil Rights, in whose name this statement is presented.

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Mrs. Ruth Bryan Rohde, Vice Chairman
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Walter White
John Hay Whitney

A Federal Commission on Civil Rights

PREAMBLE

From the very beginning our country has symbolized the free way of life. Throughout the world people look to us as the guardians of this heritage of civilized man. Today our position of world leadership rests as much on our ability to furnish sound moral guidance as on the wealth of our fields, mines, and factories That we have maintained this leadership is a great tribute.

At home, our many freedoms have contributed in large measure to the rapid growth The productivity and ingenuity which characterize this Nation Our buildings and bridges are as much monuments to the free spirit as are our cathedrals and town halls.

The struggle for these rights, which have rewarded us so richly, has not been an easy one Even today we must maintain a continual watch against the forces of totalitarianism, both from the right and the left. Democracy, by its nature,

opens its press and platforms to those who would destroy it. We must therefore strengthen our institutions to meet this challenge.

It is not enough, however, to protect rights now freely enjoyed, if we are to retain leadership and to progress toward a fuller realization of democratic values. Those who oppose us make capital of the gap between our ideals and our everyday practices. Our weaknesses are made the subject of propaganda jibes. Our word carries less weight when the charge of hypocrisy can be leveled against us

Moreover, to the extent that we are ignorant of our own shortcomings, or close our eyes to them, we nurture disease and eventual decay, for a free country cannot remain static. It must be our choice to make our practices comply with existing statutes and to enlarge the area of our freedoms.

So that democracy may thrive, we must be accurately and continuously informed concerning the extent to which fundamental rights are abridged or denied. To this end we must establish within the executive branch of the Federal Government a permanent Commission on Civil Rights, with effective means of investigating and reporting its findings. An informed citizenry will then serve as the guardian of its own liberty.

The establishment of such a Commission,. however, will not of itself guarantee our freedoms. A new body of law, affecting such areas as employment, education, and suffrage, must be enacted. The protection of life and property against mob rule must also receive legislative approval. The work of the Commission will pave the way for action by appropriate law enforcement agencies. To insure effective action, these law enforcement agencies must be adequately staffed. As a first step in this direction, the Civil Rights Section of the Department of Justice should be raised in status to a Division of the Department, headed by an Assistant Attorney General.

Within this larger framework, the Commission should devote itself to the following objectives:

FUNCTIONS

1. A permanent Federal Commission on Civil Rights should be a fact-finding agency concerned with the status of civil rights

The Commission should examine alleged denials or curtailments of these rights and hold public hearings when necessary. In addition, it should compile information regarding existing legislation and public policy in this field, and make it generally available. Studies conducted by the Commission may be initiated on its own motion or as a result of complaints or inquiries. The results of such continuous study should be published by the Government and made available to the public.

2. The Commission should be ready to aid in the prevention of conflicts and in the solution of problems involving civil rights

Occasionally there develop problems of such magnitude as to threaten our democratic pattern. The Commission should make itself available to assist in the prevention of such conflicts and should offer appropriate guidance.

3. The Commission should be prepared to offer recommendations for the improvement of civil-rights practices

In the course of its investigations, the Commission may receive requests from interested individuals and agencies regarding more effective procedures for the safeguarding of civil rights. In such cases, the Commission should, to the extent possible, give any necessary advice, based on its special experience and broad knowledge.

4. The Commission should call attention to emerging civil-rights problems on the national and international level

Abridgments of civil rights in the United States are no longer of purely domestic concern. International attention is focused on any evidence of inconsistency between our protestation and our practice. Our membership in the United Nations and particularly the recent adoption of the United Nations Declaration of Human Rights present us with new responsibilities. As model and leader for the democracies of the world, we must be constantly alert to undemocratic practices in our midst. The Commission should inform the American people of the international implications of our practices here at home, and of our obligations as a member of the United Nations.

5. The Commission should consult with State, local, and private agencies working in the area of civil rights and should, when requested, offer assistance to such agencies

In order to maximize its efficiency and insure economy in its operation, the Commission should, where possible, utilize the resources and facilities of State, local, and private agencies working in the area of civil rights. In addition, the Commission might cooperate with these agencies by offering them, in turn, advice and assistance on civil-rights problems.

6. The Commission should seek to improve the civil-rights practices of governmental agencies by studying and reporting on these practices

Previous examinations have demonstrated that some administrative agencies under the jurisdiction of the Federal Government have failed to recognize their civil-rights obligations. A permanent Commission on Civil Rights could aid in an examination of these practices and, in addition, could furnish guidance toward possible improvements.

7. The Commission should make reports to the President of the United States

The Commission should be an instrument of the executive office. It should inform the President not only of its own activities but also of the status of civil rights in this country. Such information should be embodied in reports to the President to be made at regular intervals as well as on any occasion the Commission or the President deemed appropriate.

POWERS OF THE COMMISSION

In pursuance of its functions the Commission should have the power to investigate, subpena witnesses, take testimony and hold public hearings The Commission should receive cooperation from other governmental agencies. The Commission should call to the atention of the Attorney General alleged violations of Federal civil rights. The Commission's geographical jurisdiction should include the United States and its possessions.

In order to function effectively, any investigative body must have the power to subpena witnesses and take testimony under oath, to record such testimony, and to hold public hearings. These are minimum prerequisites. Furthermore, any such Commission must be empowered to utilize services which can be provided by other governmental agencies.

It has been previously stated that, on occasion, the Commission might, in its investigations, uncover apparent violations of Federal laws protecting civil rights. In such cases, the Commission should have authority to call the alleged violations to the attention of the Attorney General, so that he, in turn, might take action to see that the law is properly enforced.

ORGANIZATION

The Commission should be directed by full-time Commissioners

We believe that the Commission could best meet its responsibilities if it were directed by full-time commissioners, preferably three in number, who had demonstrated their ability to perform the required services. The Commission should be adequately staffed in national as well as regional offices. This type of organization is to be preferred over one dependent upon prominent part-time or voluntary commissioners, who could not provide the continuous leadership necessary for the operation of an effective agency.

Submitted by the National Citizens' Council on Civil Rights, New York City

Drafting committee: Herbert Bayard Swope, chairman; Robert Carr, Dartmouth College; Robert Cushman and Milton Konvitz of Cornell University; Mrs. Sadie Alexander, Channing Tobias and Morris Ernst, members of the President's Committee on Civil Rights; Dean Ernest O. Melby, New York University; Louis Wirth, University of Chicago; Mrs. Ruth Bryan Rohde, former Minister to Denmark; Leo M. Cherne, Research Institute of America; Irving M. Engel, American Jewish Committee; Benjamin R. Epstein, Anti-Defamation League of B'nai B'rith; George Field, Freedom House; Thurgood Marshall, National Association for the Advancement of Colored People; Roger N. Baldwin, American Civil Liberties Union.

Members of the council: Dr. Henry A. Atkinson, William L. Batt, William Rose Benét, Irving Berlin, Charles C. Burlingham, James B. Carey, Dr. Harry

J. Carman, Dr. Harry Woodburn Chase, Leo M. Cherne, Norman Cousins, Gardner Cowles, Morris L. Ernst, George Field, Thomas K. Finletter, the Reverend George B. Ford, Dr. Harry Emerson Fosdick, Dr. Harry D. Gideonse, Hon. Nathaniel L. Goldstein, William Green, Mrs. Elinore M. Herrick, the Right Reverend Henry W. Hobson, Hon. Hubert H. Humphrey, Eric Johnston, Albert D. Lasker, Hon. Herbert H. Lehman, Tex McCrary, Edward McGrady, Dr. Ernest O. Melby, Dr. William C. Menninger, Newbold Morris, Edgar Ansel Mowrer, Leo Nejelski, the Right Reverend G. Bromley Oxnam, Hon. Robert P. Patterson, Judge Joseph M. Proskauer, Mrs. Ruth Bryan Rohde, Mrs. Kermit Roosevelt, Oren Root, Jr., Elmo Roper, Mrs. Anna M. Rosenberg, Rabbi William F. Rosenblum, Msgr. Maurice Sheehy, Dr. George N. Shuster, Frank Stanton, Justice Meier Steinbrink, Gerard Swope, Herbert Bayard Swope, Alfred Gwynne Vanderbilt, Dr. Henry P. Van Dusen, Walter White, John Hay Whitney.

STATEMENT REGARDING CIVIL RIGHTS BILL SUBMITTED BY THE BOARD OF CHRISTIAN EDUCATION OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA

The General Assembly of the Presbyterian Church, United States of America, representative of over 8,500 local churches, has voted consistently through the years for civil-rights enactments which would assure to all citizens of this country their just and rightful heritage of the fruits of this democracy. This official body stated:

"We deplore the fact that Federal legislation in regard to lynching still awaits enactment, and that barriers such as the poll tax disfranchise a host of our fellow citizens"—1941, page 164.

"General assembly commends the essential purpose of the President's Fair Employment Practice Committee as being in keeping with Christian principles, and favors its receiving legislative sanction rather than remaining in its present status as an Executive order"—1944, page 232.

"We heartily commend the adoption by Georgia of anti-poll-tax legislation, and by New York State of a State Fair Employment Practices Act. These are measures which general assembly again urges for Federal action"—1945, page 209.

"The declaration of human rights by the United States holds immense promise for the welfare of all mankind. We urge the passage of such legislation in this country as will be in keeping with our American traditions of freedom and democracy to all men and be a guide to those seeking these same rights through the United Nations."—1949.

WILLIAM H. MCCONAGHY.

STATEMENT SUBMITTED BY WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, HARTFORD, CONN.

Subject: Civil rights.
To: The President, chairmen of appropriate Senate and House committees.

The delegates to the annual meeting of the Women's International League for Peace and Freedom, at Hartford, Conn., May 5 to 8, 1949, urge you to hasten to enact legislation necesary for the protection of the civil and human rights of all Americans and residents of the United States in order to implement the standards set in the universal declaration of human rights passed by the United Nations on December 10, 1948.

The Women's International League for Peace and Freedom urges you to show the good faith of the United States by passing the legislation offered under the civil rights program such as the poll-tax bill, the antilynching bill, FEPC, and others in this category.

TESTIMONY OF HON. SAM HOBBS, OF ALABAMA

Mr. HOBBS. Mr. Chairman and gentlemen of the subcommittee, permit me to express my gratitude for your courtesy in hearing me this morning and giving me this opportunity to pass on to each of you my ideas as to the legislation under discussion.

While I am approaching the subject generally, I will address my remarks particularly to H. R. 4682, our distinguished chairman's bill, believing that it will doubtless be the specific measure which will be pushed.

At the outset, I should like to recommend to all who may be interested, the splendid testimony of Dr. H. M. Griffith, vice president of the National Economic Council, Inc., which, it seems to me, will add immeasurably to the thought of the distinguished members of this subcommittee in their study of this legislation.

This subject falls into four topics: Anti-poll-tax, antilynching, FEPC, and antisegregation. I have spoken many times on every one of these, and crave your indulgence to allow me to reproduce some of the most concise and applicable remarks for your consideration. In the case of the antisegregation provision, I am attaching copy of a brief which I filed with the Supreme Court at the request of some of the members of our committee in the case of *Henderson* v. *The United States et al.* and which I will have the honor to argue orally in the next few weeks before that body.

THE POLL TAX

Universal suffrage has never existed anywhere in the history of the world. Every sovereignty has fixed its own qualifications prerequisite to the privilege of the exercise of the elective franchise. The poll tax is one of these qualifications; age, residence, property ownership, and registration are some of the others most common. That the poll tax is a qualification made a prerequisite to the privilege of voting by some sovereignties is too clear for argument. Section 178 of the Constitution of Alabama, for instance, reads, in its pertinent part, as follows:

To entitle a person to vote in any election by the people he shall have * * * paid all poll taxes.

Whether or not there should be a poll tax may be debatable, but not in the Congress except on the question of submitting a constitutional amendment to the States for ratification. The fixing, vel non, of such a requirement is exclusively for each State to determine for itself. There never has been a Federal election; nor a Federal vote. All elections have been and are State elections, and only those who have qualified under State law are eligible to vote therein.

The exclusive right of a State to fix the qualifications prerequisite to the privilege of voting is well recognized and established:

DISTINGUISHED TEXT WRITERS

"Among the absolute, unqualified rights of the States is that of regulating the elective franchise; it is the foundation of State authority; the most important political function exercised by the people in their sovereign capacity." Whilst "the right of the people to participate in the legislature is the best security of liberty and foundation of all free government," yet it is subordinate to the higher power of regulating the qualifications of the electors and the elected. The original power of the people in their aggregate political capacity, is delegated in the form of suffrage to such persons as they deem proper for the safety of the commonwealth; Brightly Election Cases (*Anderson* v. *Baker*, 32, 33, 34, 23 Maryland 531).

Story, treating of this subject, says:

Every constitution of government in these United States has assumed, as a fundamental principle, the right of the people of the State to alter, abolish, and

modify the form of its own government according to the sovereign pleasure of the people In fact, the people of each State have gone much further and settled a far more critical question by deciding who shall be the voters entitled to approve and reject the constitution framed by a delegated body under their direction. (1 Story Constitution, ch. 9, sec. 581.)

From this it will be seen how little, even in the most free of republican governments, any abstract right of suffrage, or any original and indefeasible privilege, has been recognized in practice (ibid.). In no two of these State constitutions will it be found that the qualifications of the voters are settled upon the same uniform basis, so that we have the most abundant proofs that among a free and enlightened people convened for the purpose of establishing their own forms of government and the rights of their own voters the question as to the due regulation of the qualifications has been deemed a matter of mere State policy, and varied to meet the wants, to suit the prejudices, and to foster the interests of the majority.

The exclusive right of the several States to regulate the exercise of the elective franchise and to prescribe the qualifications of voters was never questioned, nor attmpted to be interfered with, until the fifteenth amendment to the Constitution of the United States was forced upon unwilling communities (the States then lately in rebellion) by the military power of the General Government, and thus made a part of our organic law; a necessary sequence, perhaps, of the Civil War, but nonetheless a radical change in the established theory of our Government. (Brightly Election Cases, author's note, pp 42, 43)

The right to vote is not of necessity connected with citizenship. The rights of the citizen are civil rights, such as liberty of person and of conscience, the right to acquire and possess property, all of which are distinguishable from the political privilege of suffrage.

The history of the country shows that there is no foundation in fact for the view that the right of suffrage is one of the "privileges or immunities of citizens." (McCrary Elections, p. 3:)

"The right to vote is not vested, it is purely conventional, and may be enlarged or restricted, granted or withheld, at pleasure, and without fault."

In *Blair* v. *Ridgely* (41 Mo. 161), the question at issue arose out of the provision of article II, section 3, of the Constitution of 1865 of the State of Missouri. By this section it was provided that no person should be deemed a qualified voter who had ever been in armed hostility to the United States, or to the government of the State of Missouri; that every person should, at the time of offering to vote, take an oath that he was not within the inhibition of this section, and that any person declining to take such oath should not be allowed to vote. The plaintiff, at an election held in the city of St. Louis on November 7, 1865, offered to vote, but refused to take the oath prescribed by the constitution. His vote being rejected, he brought his action against the judges of the election for damages. The case was taken to the Supreme Court of Missouri, where it was argued exhaustively, and with much learning, by eminent counsel, and the argument is to be found in full in the Reports of the Supreme Court of Missouri, volume 41. It was contended by the plaintiff that the section of the constitution in question was in violation of the Constitution of the United States, being a bill of attainder and an ex post facto law within the meaning of that instrument, and, in consequence, null and void. But the court held against this contention, drawing the distinction between laws passed to punish for offenses in order to prevent their repetition and laws passed to protect the public franchises and privileges from abuse by falling into unworthy hands. It is said by the court that—

"The State may not pass laws in the form or with the effect of bills of attainder, ex post facto laws, or laws impairing the obligation of contracts. It may and has full power to pass laws, restrictive and exclusive, for the preservation or promotion of the common interests as political or social emergencies may from time to time require, though in certain instances disabilities may directly flow in consequence. It should never be forgotten that the State is organized for the public weal as well as for individual purposes, and while it may not disregard the safeguards that are thrown around the citizen for his protection by the constitution, it cannot neglect to perform and do what is for the public good."

It was argued in *Blair* v. *Ridgely* that the decision of the Supreme Court of the United States in *Cummings* v. *Missouri* (4 Wall. 277), where it was held that this section of the Missouri Constitution, so far as it provided an oath

to be taken by preachers, was in the nature of pains and penalties, and consequently void, was decisive of the Blair case. But the distinction between the right to practice a profession or follow a calling and the right to vote is clearly stated in the opinion of Judge Wagner, as follows:

"The decision of the Supreme Court of the United States in the Cummings case proceeds on the idea that the right to pursue a calling or profession is a natural and inalienable right and that a law precluding a person from practicing his calling or profession on account of past conduct is inflicting a penalty, and therefore void. There are certain rights which inhere in and attach to the person, and of which he cannot be deprived except by forfeiture for crime, whereof he must be first tried and convicted according to due process of law These are termed natural or absolute rights. * * * But is the right to vote or exercise the privilege of the elective franchise a right either natural, absolute, or vested? It is certain that in a state of nature, disconnected with government, no person has or can enjoy it. That the privilege of participating in the elective franchise in this free and enlightened country is an important and interesting one is most true. But we are not aware that it has ever been held or adjudged to be a vesetd interest in any individual.

"Suffrage in the United States not being a vested right, it results that persons who have enjoyed and exercised the privilege, and who have been qualified electors, may be entirely disfranchised and deprived of the privilege by constitutional provision, and such persons are entirely without a remedy at law." (McCrary, Elections, p. 9.)

"The whole subject of the regulation of elections, including the prescribing of qualifications for suffrage, is left by the National Constitution to the several States, except as it is provided by that instrument that the electors for Representatives in Congress shall have the qualifications requisite for electors of the most numerous branch of the State legislature, and as the fifteenth amendment forbids denying to citizens the right to vote on account of race, color, or previous condition of servitude. Participation in the elective franchise is a privilege rather than a right, and it is granted or denied on grounds of generaly policy, the prevailing view being that it should be as general as possible consistent with the public safety" (Cooley's Constitutional Limitations, 8th ed., Carrington, vol. 2)

Also, the following treatises are to the same effect:
Morse, Citizenship, section 3.
Pomeroy, Constitutional Law, section 535.

THE CONSTITUTION OF THE UNITED STATES

Article I, section 2:

The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature

Article I, section 4:

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators

Article I, section 8, clause 18:

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

THE SUPREME COURT OF THE UNITED STATES AND OTHER COURTS

To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the fourteenth amendment. Privilege of voting is not derived from the United States, but is conferred by the State, and, save as restrained by the fifteenth and nineteenth amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appro-

priate. The privileges and immunities protected are only those that arise from the Constitution and laws of the United States and not those that spring from other sources. *Breedlove* v. *Suttles* (302 U. S. 277, 283); *Pirtle* v *Brown* (118 Fed 2d 218, certiorari denied by Supreme Court, 62 Sup Ct Rep 64); *Huber* v. *Reily* (53 Penn. St. 112); *Minor* v. *Happersett* (21 Wall, U. S. 162, 170); *United States* v. *Reese* (92 U. S 214, 217, 218); *United States* v. *Cruikshank* (92 U. S. 542), *McPherson* v. *Blacker* (146 U S. 1, 38, 39); *Anderson* v. *Baker* (23 Md. 531); *Ex parte Yarborough* (110 U. S. 631, 664, 665); *Blair* v. *Ridgely* (41 Mo. 63); *Guinn* v. *United States* (238 U. S. 347, 362, L. R. A. 1916 A, 1134); *Ex parte Stratton* (1 W. Va 305); *Kring* v. *Missouri* (107 U S. 221); *Hamilton* v *Regents* (293 U. S 245, 261); *Washington* v. *State* (75 Ala. 582).

The proponents of such measures rely for support of their contention almost exclusively upon the case of *United States* v. *Classic et al.* (313 U. S. 299). They contend very artfully that this case justifies the Congress in the enactment of the present bill but they do not mention the fact that the Classic case was a criminal prosecution against commissioners of elections for willfully altering and falsely counting and certifying the ballots of voters cast in a primary election for a Representative in Congress, among others. Based on article I, section 2, of the Federal Constitution, quoted supra, the majority decision of the Supreme Court holds:

> Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a State to cast their ballots and have them counted at congressional elections.

We concede the soundness of this holding.

The majority opinion further holds: That since by law in Louisiana, primaries are made an integral part of the procedure for the possible choice of Congressmen and since in Louisiana the nomination resulting from the primary is equivalent to election, the criminal statute covers interference with the right to vote and have the votes honestly counted and certified, in primaries as well as in general elections.

Mr. Justice Douglas, with Justices Black and Murphy, dissented as to primaries. The dissenting opinion is powerful, if not unanswerable in the particular case. We leave the members of the Supreme Court to their quarrel on this point as it is not germane in our consideration at this time.

Neither the majority nor minority of the Supreme Court question congressional power to protect by appropriate legislation the right secured by the Constitution to a vote and an honest count and certification. They agree that this is assured by article I, section 2, quoted supra, wtih article I, section 8, clause 18, which gives Congress the power—

> to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof.

It may be questioned whether or not the right to vote and to an honest count is a power vested by this Constitution in the Government of the United States or in any department or officer thereof. This question, however, has no bearing upon our instant inquiry. The vital question of law pertinent to the debate of the constitutionality, vel non, of the pending bill is, not whether Congress has constitutional power to pass a criminal law, to punish interference with the right of a qualified voter to vote and to have an honest count, but has Congress the constitutional power to pass a law usurping the admittedly

exclusive power of a State to prescribe the qualifications of its qualified voters?

No matter what interpretation they may seek to put on the Classic case, no matter how critical they may be of the Breedlove case, the United States Circuit Court of Appeals, sixth circuit, in the case of *Pirtle* v. *Brown et al.* (118 Fed. Rep., second series, p. 218), followed the Breedlove decision, quoted from it, and cited it approvingly, and the Supreme Court denied certiorari, thereby refusing to upset the decision in the Pirtle case, after the decision by the Supreme Court in the Classic case had been handed down. (Sixty-second Supreme Court Reports, p. 64.)

So the Supreme Court, since its decision in the Classic case was handed down, has refused to review the decision in the Pirtle case, which was handed down after the decision in the Classic case and which agrees fully with the holding in the Breedlove decision.

The Breedlove and Pirtle cases were both poll-tax cases. The Classic case had nothing to do with the poll-tax question. The sole question in the Classic case was:

May State election officials steal ballots cast by duly qualified voters for a candidate for Congress in a State primary election, in violation of a Federal criminal statute condemning all such rascality, without being subject to prosecution and punishment by the Federal Government?

The Supreme Court held: That the right granted the Federal Government by article I, section 2, of the Federal Constitution, to have its Congressmen chosen in a State election, meant the right to have them honestly chosen; and that the right granted the Federal Government by article I, section 8, clause 18 of the Federal Constitution, "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof," authorized the making of the law violated by Classic and his partners in crime. In other words, the Classic case dealt not with who was a qualified voter under Louisiana law, but with the right to have an honest count of the ballots of admittedly qualified voters.

The United States of America was created by the Thirteen Crown Colonies. It existed long before the Constitution. As far as external sovereignty in international affairs was concerned, it was a sovereign Nation. It functioned through the Continental Congress composed of delegates from the Thirteen Colonies. The Colonies became free and independent States by virtue of the Declaration of Independence, in the making of which they united, and which was validated by force of arms. Each State was sovereign, supreme, free, and independent except as they, in the exercise of their sovereignty, banded themselves together and delegated by their own free will and accord, certain of the powers of their sovereignty to the limited union they agreed upon and formed. This union, according to the Articles of Confederation, was to be perpetual and in international affairs was given sovereignty. It had no power whatsoever in domestic affairs. It could not even levy taxes for its own support, being dependent upon contributions made by the States. The sum total of all domestic sovereignty was in the respective States and has been diminished from time to time only

as the absolutely sovereign States saw fit to make further delegations of parts of their sovereign power. After becoming convinced that the union existing before and under the Articles of Confederation was impracticable, the Constitution was ordained and established "in order to form a more perfect union." The Supreme Court of the United States in the case of *U. S.* v. *Curtiss-Wright Export Corp. et al.* (299 U. S. 304. 315) says:

> The broad statement that the Federal Government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. In that field, the primary purpose of the Constitution was to carve from the general mass of legislative powers then possessed by the States such portions as it was thought desirable to vest in the Federal Government, leaving those not included in the enumeration still in the States.

There never has been a Federal election held nor a Federal vote cast. The States existed before the Federal Government. They created it. They gave it life and such limited powers as it possesses. The power to hold elections and to authorize people to vote was never delegated to the Federal Government. It has always been and remains in each State.

In the Constitution of the United States, however, the States—absolutely sovereign in this field as well as in all domestic affairs—changed the form of their Federal Government and provided in article I, section 2:

> The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

In 1913 the seventeenth amendment became a part of the Constitution of the United States, providing for the election of Senators in exactly the same way. But both Senators and Representatives were to be elected, not by the people of the United States nor by the votes of persons authorized to vote by the United States, but "by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature," fixed by the State.

When the States in convention assembled agreed to undertake to hold elections for the Federal Government, the way it was to be done was merely by admitting candidates for Federal office into the regular State elections. All elections are State elections. They always have been, are now, and should so continue. In agreeing to admit candidates for Federal office to State elections, the States did not stipulate what qualifications they would fix as prerequisite to the privilege of voting. They did not limit themselves. They did not confer any right whatever upon their Federal Government except that its candidates could run in their elections and be voted on by the voters of the States—those who had been given the franchise of suffrage in each State by the law of the State. But in assuming this obligation they gave this pledge:

> And the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

In other words, wrote the States, we pledge you that as our guest in our political homes you will be treated as well as we treat members

of our own political family; we will give you the best we have, judged by the same standards and safeguards we have erected for our own safety. But we will use for you only the same servants we employ for ourselves, and we do not agree to make you master, nor to employ more nor different servants because of this hospitality we cordially extend you.

The principle dominating this field of thought is that "the law guarantees every citizen the right to be justly governed, but not the privilege of being one of the governors."

We are perfectly familiar with the distinction sought to be drawn by the supporters of this measure between qualifications and conditions. In the last analysis, however, this seems to be a distinction without a difference. Whether the requirements fixed by the law of a State as prerequisites to the privilege of voting be conditions or qualifications is unessential. Whatever they may be called, the State alone has the right to fix them. The Federal Government has no such right. We are, of course, also familiar with section 4 of article I of the Constitution of the United States, the pertinent part of which reads as follows:

> The times, places, and manner of holding elctions for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

While this does delegate to Congress a certain veto power, it is only as to regulations prescribed by a State as to "the times, places, and manner of holding elections." It has nothing whatever to do with the paramount right of a State to fix conditions or qualifications prerequisite to the privilege of voting. It has to do exclusively with the "how" of the election, not with the "who" of the electors.

You may say that a poll-tax requirement is unfair and unwise, but you have no vestige of authority or right to outlaw the poll tax by statute as here proposed.

The caste system of India may be all wrong and indefensible, but the Congress of the United States has no power to change it. We have just as much power over India as we have over Alabama.

England may, in our judgment, be foolish in keeping her King, but no one would suggest that we have any semblance of power to fire their King, yet we have even less power over Alabama or any other State of this Union than we have over England. The reason is plain. We are oath-bound to respect the sovereignty of every State of the United States, whereas we took no such oath with respect to England.

Germany's treatment of the Jews was barbarous, but no one of us has ever sponsored a measure here to stop this rape of right, this inhuman murder of law, realizing that, so far as this Congress could legislate, Germany's internal affairs were Germany's business and not ours.

I want to call your attention to the propaganda which has been flooding the Capitol of late, much of which has come to my desk, issued by organizations that are supporting this measure, calling attention to the fact that there is no race question presented here, because more whites are disenfranchised by the poll tax than colored people. Whether that be true or not makes no difference. There certainly is no distinction made, and no discrimination is practiced or

possible under any of the poll-tax statutes or constitutional provisions.

May I read to you what the constitution of Alabama says on that subject, contained in section 178 of the constitution of Alabama?

To entitle a person to vote in any election of the people he shall have—

Then deleting the provisions as to age, residence, and registration—

paid all poll taxes

Could any words be devised or used which would more clearly evidence the fact that that is a primary qualification fixed for all who would vote by the constitution of Alabama?

It is a requirement of a condition precedent to the privilege of voting. I maintain that there are no words that would have evidenced such an intent more clearly. So it is that if we are to comply with our oaths of office, if we are to uphold and maintain the Constitution of the United States, as we have sworn to do, we cannot thus impinge upon the sovereignty of the State of Alabama.

This bill would override and violate the sovereignty of those States which have seen fit in their wisdom to adopt the poll tax as one of the prerequisites to the privilege of voting in elections held in and by those States.

But not only is the poll tax requirement a qualification made a prerequisite to the privilege of voting, it is also a fair and reasonable test.

There can be no escape from the conclusion that this refers not to the "how" of the election but to the "who" of the electors. It certainly has nothing whatsoever to do with the time, nor place, nor manner of holding any election. It certainly provides a reasonable test of qualification in that its payment is left purely voluntary and all money received, without deduction of any fees or other costs, goes to the public schools. So, the poll-tax requirement tests a citizen's interest in the financial support of the public schools of his State and also tests his interest in obtaining for himself the franchise of suffrage. One really desiring to vote, one who would take an interest in voting, one who would take the trouble to post himself upon the merits or demerits of candidates and issues, has never minded and will never mind paying $1.50 a year in order to qualify as an elector. If one desiring to vote values the privilege of voting less than $1.50 a year, it is doubtful if he could be a good elector. Therefore, since section 4 of article I of the Federal Constitution is the only grant of power to Congress over suffrage and elections, Congress has no power at all to pass a law overriding this requirement of State law. This was the holding of the Supreme Court of the United States in the Breedlove case and again in the Pirtle case.

The appeal that I am making to you today who are honoring me with your presence and attention and to those who may, as I certainly hope they will, read these remarks is that this thing be not done, particularly at this time.

In conclusion, therefore, I invite your particular and special attention to those passages of Washington's Farewell Address wherein he expressed his parental solicitude for the future of the Nation of which he was father:

That your Union and brotherly affection may be preserved

And this primary injunction:

The unity of government which constitutes you one people is also now dear to you. It is justly so, for it is a main pillar in the edifice of your real independence, the support of your tranquillity at home, your peace abroad, of your safety, of your prosperity in every shape, of that very liberty which you so highly prize. But as it is easy to foresee that from different causes, and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment that you should properly estimate the immense value of your National Union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it, accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity, watching for its preservation with jealous anxiety, discountenancing whatever may suggest even a suspicion that it can in any event be abandoned, and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest or to enfeeble the sacred ties which now link together the various parts.

The mighty mind of our first President, as he let it run down the long years of the future, saw clearly that from time to time there would be legislation proposed and administrative policies considered which would tend toward disintegration of the unity which he conceived to be and which we all must admit is essential to the preservation of our form of government, the dual system of government, the States supreme in their realm of internal affairs, the Federal Government supreme in its exclusive sphere of international affairs.

No one can deny that the South has taken its rightful place and performed well its full part in every foreign war which this country has waged. In the War of the Revolution the blood of Southern patriots reddened the soil of New England and wrote thereby a plea against sectionalism. The ragged heroes who followed Washington across the Delaware and to Valley Forge were Americans all. There was no sectional partisanship among the boys who fought at Chapultepec nor San Jacinto! The forces of the Republican in our war with Spain were not clad in blue or gray, but in the uniform of the Nation! The boys who sleep on San Juan Hill or in the trenches around Santiago were from every part of the Union.

Those men who "gave the last full measure of devotion" in France in World War I and their buddies who, thank God, came back to live among us, were Americans—not northerners nor southerners nor easterners nor westerners.

Every one of those wars of the Republic has been nonsectional, and united we stood, fought, and won.

More than a year before the Declaration of Independence was adopted by the Continental Congress at Philadelphia, a similar declaration of independence was adopted by a convention which met in Charlotte, N. C. It is known as the Mecklenburg Declaration of Independence. From a pamphlet preserved in the Library of Congress we learn:

Therefore on the sd 19th May 1775 the sd. committee met in Charlotte Town (2 men from each company) vested with all powers these their constituents had or conceived they had.

After a short conference about their suffering brethren besieged and suffering every hardship in Boston and the American blood running in Lexington, the electrical fire flew into every breast.

These men of the South felt keenly the afflictions of their brethren in Boston, and the news of the American blood running in Lexington caused the electrical fire to fly into every breast. Would that we were so closely knit in bonds of brotherhood and sympathetic regard today. The ground that we have lost in this respect may be regained but not without mutual respect and confidence.

Every one of those hardy pioneers loved his fellows engaged in the common struggle to build here "a new nation, conceived in liberty and dedicated to the proposition that all men are created equal." We have a rich, common heritage from these founding fathers. There is much to love in the citizens of every part of our great Nation. We may look on this and be drawn closer together. We may look on the divisive elements and become hostile camps. The future is in our hands today to mar or to make. The South asks and will have no part in the local problems of other sections. We have full confidence in our brethren that they wil lwork out their own difficulties wisely and well. We may consider the things that will make us one or the things which divide. My plea is not made as a southerner nor as the Representative of a great district of Alabama, but as a humble citizen of this great Republic. I plead with you, gentlemen, and with all who have ears to hear, that we set ourselves against consideration of those things which tend to divide us and give our best thought to those things which unite. There are many measures challenging our best united thought.

Let us press forward toward our glorious destiny in unity, "discountenancing whatever may suggest even a suspicion that it can in any event be abandoned, and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts."

There is no reason why we should adopt the unconstitutional, statutory way when we have a perfect right to submit a constitutional amendment which might do legitimately what the proponents of this heinous bill want done. I beg of you, whether you support the objective of this bill or not, that it be defeated, because it is illegitimate, and its passage would assassinate interstate comity. I beg of you to think on these things and be on your guard lest plausible arguments, artfully advanced, should sway your better judgment.

FEPC

I am going to exercise the temerity to address you in a rather serious vein with respect to some of the fundamentals of Government. I hope that I may have your ears, and not only your ears but your minds as well, for the few minutes that I shall endeavor to hold your attention.

Particularly I beg to address my remarks to my friends, and they are my friends, as every member of this group is, my friends on the Republican side of the committee. I would, if I may, call your attention to the fact that your forefathers and mine in the debates in the Constitutional Convention, time and time and time again, stressed these two points. First, that this was to be a government of laws and not of men; and second, that this Government would be imperiled to the point of absolute certainty of destruction if we allowed it to become a bureaucracy with all power centralized in Washington; so that the Government of the people, for the people, and by the people would be taken from the people and would inevitably perish from the earth. That was the burden of 4 months' debate. These founding fathers were certainly great men. They were preeminent in their wisdom, character, and patriotism. When they harped on those two warnings, they were not talking to themselves alone, nor to their generation, but also to those patriots of posterity who love the United States enough to heed these injunctions and thus preserve this Nation as the land of the free, and the home of the brave.

Now then, what do we have here? An appropriation to approve and maintain a national agency created not by law, but by man. Another bureaucracy added to the number of those that now make the people weary in well doing. With constitutional sanction? Oh, no.

There is not a word—not one word—I reiterate, not one word in the Constitution that even approaches justification for the creation of this committee.

Would some like to suggest the thirteenth amendment? The thirteenth amendment relates solely to slavery. Human slavery was thereby damned, and we all, with one accord, thank God that that curse and blot upon our civilization is gone forever. But that is no authority for this Committee. The thirteenth amendment states that no man should be compelled to work. This is the reverse, that he must be compelled to work if he has the proper color of skin, the proper religion, or is of proper national origin. In other words, that, in itself, is almost a violation of the thirteenth amendment. What the FEPC is seeking is to make their pets work whether they are fitted to work, or not, and whether, or not, they are qualified for the jobs into which they are forced.

Further than that, I am sure you gentlemen will bear in mind that the FEPC was set up in the war emergency period.

It has been said that the fourteenth amendment of the Constitution gives ample authority for the creation and work of the FEPC. I welcome the opportunity to try to answer such a contention; I am delighted to do so. We might just as well cite the code of Hammurabi. The fourteenth amendment no more justifies the creation and the practices of the FEPC than it fixes the price of eggs on Mars. What does the fourteenth amendment say? Its pertinent parts, so far as the gentleman's argument is concerned, read as follows:

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

The prohibitions of the fourteenth amendment relate solely to State action. Except to the blind, and there are none so blind as those who will not see, all may see at a glance that the fourteenth amendment relates solely to how the States must function. No prohibition therein contained applies to the Government of the United States nor to any

department, agency, or agent thereof. No one even suggests that any State has done anything discriminatory; nor that any State has made or enforced any law that might abridge the privileges or immunities of citizens of the United States; nor that any State has sought to deprive any person of life, liberty, or property without due process of law; nor that any State has sought to deny to any person within its jurisdiction the equal protection of the laws. So, since no State has been accused of any wrongdoing, there can be no possibility of any justification for the pending legislation on the theory that Congress has power to enforce, by appropriate legislation, the provisions of the fourteenth amendment.

The citation of the fourteenth amendment, therefore, reminds me of the story of a colored man who had a marvelous gift of prevarication, stimulated and implemented by a most vivid imagination. He came back from a wildcat hunt telling of a rabbit who climbed a tree and hurled himself into the face of a pursuing wildcat. One of his hearers remarked, "Why, Uncle George, you know rabbits don't climb trees." To this Uncle George replied, "Yas; I knows that rabbits don't climb trees, but this 'un was in sech a tight place he was jes' obleeged to."

Even if there were any pretense that any State had violated any provision of the fourteenth amendment—which there has not been and cannot be—the only possible application even by a tortured construction would be that the failure to employ someone considered for employment constituted a deprivation of property without due process of law.

Had the clause of the fifth amendment which reads, "No person shall be deprived of life, liberty, or property without due process of law," been cited, the citation would have been more nearly in point than the citation of the fourteenth amendment, which is utterly pointless in this connection. But under either citation the argument as to deprivation of property because of a failure to employ is utterly untenable.

Whoever heard of a job in expectancy, which one has never had, being called his property? There is no one, on second thought, who would make such a foolish contention. It is absolutely unsound and preposterous. There never has been a hint of such a theory in the history of jurisprudence. If I have a job and you take it away from me, then there may be a question of my property right in that job; but no such question could possibly arise as to a property right in a mere hope of future employment.

However, I agree with you fully that discrimination is being practiced daily as to employment. It is being fomented and practiced by the infamous outfit known as the FEPC. It is not being practiced against the ones you would serve, sir; not against the Negro; not against any whose skin pigmentation, nor race, nor creed makes them beloved in your eyes. It is being fomented and practiced against Caucasians—native-born American citizens, the bulk of our taxpayers. These are they who are being discriminated against in two very material ways every day that the FEPC is allowed to function. In the first place, they are ousting those who have the misfortune, in their eyes, to have a white skin, from employment that they already have. In the second place, they are discriminating against them because of the fact that they will not give them jobs, so that they may discriminate in favor of those who cry discrimination.

An illustration of the functioning of the FEPC is in the case of the Dallas Morning News, a privately owned newspaper published in Dallas, Tex. This newspaper desired to employ a helper in its plant and printed an advertisment in its newspaper which read as follows: "Wanted—Colored man to work at night as paper handler. Essential industry." The regional director of the FEPC wrote the Dallas Morning News a letter with reference to this advertisement from which the following quotation is taken:

> The Committee on Fair Employment Practice, operating under Executive Order No. 9346, a copy of which is attached, considers that such advertisement is a violation of the order. It limits applications to a narrow field described in the advertisement, and automatically bars persons of other race or color from applying, even though these latter may also possess skill needed for your establishment. You are therefore requested to take immediate steps to remove from this and from any other advertisment for employees any features which are discriminatory as to race, creed, color, and nationality. You are further requested to advise your personnel office or hiring agent that they should disregard such specifications in considering applications for employment This includes the United States Employment Service.

This is important because it appears to be a sincere effort on the part of the regional director to prevent the exclusion of members of the Caucasian race from an opportunity for employment. Of course the regional director overstepped the bounds of his authority because the advertiser offering employment was a privately owned newspaper and not yet within the control of the FEPC, but he shows that his intention was good. He really tried to prevent a minor discrimination against the Caucasian race. However, when the newspaper resented this unwarranted intrusion into the field of private employment, the chairman of the FEPC rebuked the regional director for exceeding his authority because private employment was beyond the control of the FEPC. So, the only case that has come to light, as far as I know, in which anyone in the FEPC tried to prevent discrimination against members of the Caucasian race, died aborning.

A glaring illustration of discrimination against members of the Caucasian race is right here in the District of Columbia. There are in the Capital of our Nation, hundreds of perfectly well-qualified citizens of the United States who might have been employed in the Office of the Recorder of Deeds. Nevertheless, if my information be correct, there is not a single employee in that office who is not a Negro.

Information is current that directives issued in aid of the Executive orders under which the FEPC was created and is functioning, require that the percentage of Negroes employed in any office must equal the percentage of Negroes in the population of the community. The percentage of Negroes of the total population of the District of Columbia is not yet 100 percent, nor is it 100 percent of those who constitute the citizenship of the District of Columbia.

Similarly the Executive orders under which the FEPC was created and is functioning deal only with employment and seek to prevent discrimination solely by reason of race, creed, color, or national origin. But it is said that some of the directives require that there be no segregation among employees. The basis of the Executive orders is recited to be the desirability of promoting the fullest utilization of all manpower by maximum employment. Does this objective make imperative the abolition of segregation of those already employed? Does compulsory intermingling of employees promote the war effort? Even

where all persons concerned prefer segregation? Or would the tendency be in the opposite direction?

The Executive order creating the FEPC reads:

> Now, therefore, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States and Commander in Chief of the Army and Navy—

With confidence I challenge anybody to point out one syllable or one word of such authority that he has, either as President of the United States or as Commander in Chief of our Army and Navy. His duties as President are clearly indicated in the Constitution, but there is not one of them that authorizes the creation of the FEPC, either expressly or by implication, I submit, most humbly and respectfully. The Commander in Chief of the Army and Navy has the duty to command the Army and Navy which the Congress, and the Congress alone, is, under the Constitution, authorized to create and maintain.

Be this as it may it is not the words of the Executive orders as much as it is the maladministration thereunder that causes so much opposition. There is discrimination shown in our national employment picture, but it is not against but in favor of race, creed, or color—differing from that of the majority of our citizens. The majority of us are taxpayers and therefore interested in efficiency. These Executive orders are being administered so as to force employment of members of spoiled and petted minorities, wholly without regard to qualification.

There is only one question here involved. It is not whether or not we favor a fair, square deal to all alike, nor whether or not the FEPC should be perfectly qualified to do some other work well, but such a person should be discriminated against when hiring a stenographer. One might be doing nothing in aid of the war effort, but unless qualified that person should be discriminated against when hiring an accountant. One who cannot read might be flattered by being employed as a proofreader, and might need the salary, but such a person ought not to be employed for such a job. If you are not a carpenter, you are not entitled to a carpenter's job or pay. The same is true as to every other job requiring a particular skill. However, according to the FEPC, if there are in a community 10 Negroes out of each 100 persons, then 10 percent of those employed in each category of employment must be Negroes, regardless of every consideration save the color of their skin.

I want to call your attention to one point further: There is no policy of Government except established in one of two ways: It may arise, as this one has arisen, from the innate character of the American people—we believe in a square deal, a square deal to all without any question of race, creed, color, or origin, we believe that everyone should have an absolutely square deal. That is one source of policy; the other way, and the only other way, that it can arise is from the law or the Constitution. I challenge any man to dispute it; these are the only ways policy can come into being. But if there were policy it would not be in the discretion of the President, either as such or as the Commander in Chief of the Army and Navy, to enforce it by a committee created without constitutional or statutory authority.

Both major political parties have from time immemorial each had in their platforms in various and sundry wordings the same outcry

against bureaucracy, the same pledges to cut it down, the same pledges of economy. I certainly welcome the test of whether we mean it or not. Do we mean that our platforms are like railway coach platforms, just something to get in on? Or do we really mean to curb bureaucracy? Do we mean to economize? If there be any law to be enforced, why not leave its enforcement to the Department of Justice, for the maintenance of which we appropriate millions of dollars a year? Or to the three other agencies now functioning and charged with the duty of enforcing laws requiring that no discrimination in employment practices be permitted? Why should we countenance the continuance of the FEPC when the Department of Labor, the Labor Division of the War Production Board, the Public Welfare Division of the Bureau of Public Health, and the Department of Justice—all four—already enforce such laws? Why appropriate for the FEPC and its maladministration, creating discord, disunity, and worse?

We are not inveighing against law enforcement but against extravagant and confusing duplication of agencies to do that single job, especially against the maintenance of that fifth agency which has proven itself an enemy fifth column, misconceiving, misinterpreting, and bringing into disrepute and disgrace the laws and the Executive orders it was established to enforce.

Let us be frank and honest with each other. There is really very little discrimination in employment because of race, creed, color, national origin or ancestry.

To be discriminating is a virtue. It is a characteristic to be sought and acquired. Discrimination in the choice of music, painting, sculpture, or any other art including the art of the artisan or salesman, is a quality of which one may be proud. To differentiate because of low motives such as prejudice or hatred is unworthy, to say the least. To eschew the lower and choose because of higher motives is commendable. Rotary teaches its members: "He profits most who serves best." We have never risen to the high level of that business ethic, and still seek to make money only for money's sake. But, whether the business ethic be higher or lower, most of the discrimination in employment is because of the profit motive, and the belief that the applicant employed was better fitted for the job or would be of more financial benefit to the employer than the rejected applicants. The same is true of discharges. Almost every business institution, large or small, is a stadium wherein is played the cruel game of "survival of the fittest." The fittest like it, and pridefully admit the truth. The others do not like it, and nearly always yell: "Kill the umpire." They charge crooked favoritism or any other "alibi" they can frame. Sometimes character, qualifications, and experience being equal, the determining factor in employment, or in replacement, is the family connections or friends of the respective applicants, and their comparative pulling power of business or good will. But as used in the laboratories of personnel procurement, retention, or promotion, the best neutralizer of the acid of prejudice or hatred is the alkali of dollar-value!

Suppose, however, that the profit motive is a myth, the survival of the fittest but a false figment of a diseased imagination, and assuming the truth of the theory of the FEPC bill, to wit, that hatred because of race, creed, or color caused and causes every failure to get or to keep employment. If hate be the cause, is forcing the hated on the hater the cure?

QUO WARRANTO?

Who are we? And, "Upon what meat doth this our Caesar feed, that he is grown so great?" We are not the sovereign, we are but the representatives of the sovereign; chosen by the sovereign for the shortest term known to our election laws, to use only those legislative powers granted us in the Constitution. This limitation of power is true only of the Congress.

All legislative powers herein granted shall be vested in a Congress (art. I, sec. 1).

The executive power shall be vested in a President (art II, sec 1).

The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish (art. III, sec. 1).

So, if you are a man of honor, you cannot vote for a bill, no matter how good you may think it, unless you can point to your authority in the Constitution.

I challenge anyone so to justify this bill or any part of it.

This is a free country. Our freedoms are guaranteed by the Constitution and by the honor of the Congress and the courts. Nor do our rights have to be enumerated—we are free—and have all rights that we have not voluntarily surrendered.

The provision "All legislative powers herein granted shall be vested in a Congress" means that Congress "within the limits of its powers and observing the restrictions imposed by the Constitution may in its discretion, enact any statute appropriate to accomplish the objects for which the National Government was established." (*Burton* v *United States* (202 U. S. 344, 367).

The only legislative powers vested in Congress are those "herein granted." "Whenever, therefore, a question arises concerning the constitutionality of a particular power, the first question is whether the power be expressed in the Constitution. If it be, the question is decided If it be not expressed, the next inquiry must be whether it is properly an incident to an express power and necessary to its execution If it be, then it may be exercised by Congress. If not, Congress cannot exercise it." (Justice Story, Commentaries on the Constitution, sec. 1243, quoted with approval in *United States* v. *Harris* (106 U. S. 629, 636 (1883).)

The Government of the United States is one of delegated, limited, and enumerated powers. Therefore, every valid act of Congress must find in the Constitution some warrant for its passage. This is apparent by reference to certain provisions of the Constitution: e. g., (a) article I, section 1 that all legislative powers granted by the Constitution shall be vested in the Congress of the United States; (b) article I, section 8, which enumerates the powers granted to Congress, and concludes the enumeration with a grant of power "to make all laws which shall be necessary and proper to carry into execution the foregoing powers and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof"; and (c) the tenth amendment which declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." (*Martin* v *Hunter's Lessee* (1 Wheat. 304 (1816); *McCulloch* v. *Maryland* (4 Wheat. 316 (1819)); *Gibbons* v *Ogden* (9 Wheat 1 (1824)); *United States* v. *Harris* (106 U S 629, 635 (1883)); *Civil Rights Cases* (109 U. S. 3); *Butts* v. *Merchants Transportation Co* (230 U S 126) (None of these cases has been overruled or qualified on the point now at issue.) *U. S.* v. *Cruikshank* (92 U. S. 545); *Pettibone* v *U. S.* (149 U S 202); *Logan* v. *U. S.* (144 U. S. 268, 286, 293) (wherein is clearly shown the distinction between rights that are "recognized" by the Constitution and those that are so "granted" or "created").

There is enough law now to protect against any unjust discrimination.

Section 41, title 8, United States Code Annotated:

EQUAL RIGHTS UNDER THE LAW

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exor other proper proceeding for redress (R. S. 1979).

To deprive one of right to select and follow any lawful occupation—that is, to labor or contract to labor, if he so desires and can find employment—is to deprive him of both liberty and property within meaning of this section.—*In re Parrott* (C. C. Cal. 1880, 1 F, 481, 510).

Indenture of apprentice of Negro child, which did not contain provisions for his security and benefit required by general laws of State in indentures of white apprentices, was void under Civil Rights Act of 1866.—*In re Turner* (C. C. Md. 1867, Fed. Cas. No. 14,247).

Section 43, title 8, United States Code Annotated:

CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress (R. S 1979).

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both (sec 20 of the Criminal Code, 18 U. S C., sec. 52; *Screws et al.* v. *U. S.*, decided May 7, 1945).

Persons of African descent have same, but no greater, rights than other citizens in State where they make their home; rights and privileges protected from infringement by this section, and infringement of which creates a cause of action for damages, being common to all citizens—*Brawner* v. *Irvin* (C. C. Ga., 1909, 169 F. 964).

Colored teacher could maintain suit to enjoin salary discrimination between white and colored teachers, as against contention that he could not complain because he was public employee—*Mills* v. *Board of Education of Anne Arundel County* (D. C. Md. 1939, 30 F. Supp. 245).

Action for damages for deprivation of civil rights sounds in tort, and jury may award exemplary or punitive damages—*Hague* v. *Committee for Industrial Organization* (C. C. A. N. J. 1939, 101 F. 2d 774), modifying *Committee for Industrial Organization* v. *Hague* (D. C., 25 F. Supp. 127), certiorari granted *Hague* v. *Committee for Industrial Organization* (1939, 59 S. Ct. 486, 306 U. S. 624, 83 L. Ed. 1028). Modified on other grounds (1939, 59 S. Ct. 954, 307 U. S. 496, 83 L. Ed. 14).

Kerr against the Enoch Pratt Free Library of Baltimore City et al. decided by Fourth Circuit Court of Appeals, April 17, 1945, holds:

We think that the special charter of the library should not be interpreted as endowing it with the power to discriminate between the people of the State on account of race and that if the charter is susceptible of this construction, it violates the fourteenth amendment since the board of trustees must be deemed the representative of the State. The question of interpretation is not unlike

that which was before the Supreme Court in *Steele* v. *Louisville & N. R Co* (65 S. Ct. 226) where it was held that a labor union which was empowered by the Federal Railway Labor Act to represent a whole craft of employees could not discriminate against Negro members thereof. The Court said (pp. 203, 232):

"If, as the State court has held, the act confers this power on the bargaining representative of a craft or class of employees without any commensurate statutory duty toward its members, constitutional questions arise. For the representative is clothed with power not unlike that of a legislaure which is subject to constitutional limitations on its power to deny, restrict, destroy, or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights. If the Railway Labor Act purports to impose on petitioner and the other Negro members of the craft the legal duty to comply with the terms of a contract whereby the representative has discriminatorily restricted their employment for the benefit and advantage of the Brotherhood's own members we must decide the constitutional questions which petitioner raises in his pleading.

* * * * * * *

"We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents, cf *J. I. Case Co.* v *National Labor Relations Board*, supra (321 U S 335, 64 Ct. 579), but it has also imposed on the representative a corresponding duty. We hold that the language of the act to which we have referred, read in the light of the purposes of the act, expresses the aim of Congress to impose on the bargaining representative of a craft or class of employees the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them."

For like reasons we think that the charter of the Library which empowers the Board of Trustees to manage the institution for a benevolent public purpose should not be construed to authorize them to pass a regulation in respect to the appointment of its agents which violates the spirit of the constitutional prohibition against race discrimination. Nor do we assume that the act would be so interpreted by the Court of Appeals of Maryland which in *Mayor, etc.* v. *Radecke* (49 Md. 217) pointed out the duty of the courts to look beneath the language of an act to find the true purpose of a grant of legislative power. In that case the court said:

"While we hold that this power of control by the courts is one to be most cautiously exercised, we are yet of opinion there may be a case in which an ordinance passed under grants of power like those we have cited, is so clearly unreasonable, so arbitrary, oppressive or partial, as to raise the presumption that the legislature never intended to confer the power to pass it, and to justify the courts in interfering and setting it aside as a plain abuse of authority."

REPEALING THE CONSTITUTION

The reason the FEPC law is so passionately desired by its proponents is—and they virtually admit it—to avoid the necessity of complying with "the supreme law of the land";

This Constitution, and the laws of the United States made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath of affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States (art. VI).

The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior.

The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed (art. III).

Amendment VI: In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witneses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

Amendment VII: In suits at common law, where the value in controversy shall exceed $20 the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law.

Amendment IX: The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment X: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

From these quotations from the Constitution, it is perfectly clear that this bill seeks:

First. To legislate not in pursuance of the Constitution, but in spite of it.

Second. To divest the courts of their judicial power, and to give it, together with legislative and executive powers, to a new bureau created by this bill and by it clothed with omnipotence.

Third. To annul the constitutional guaranties of the right of trial by jury.

Fourth. To annihilate the freedom of choice of private organizations to select their own members.

Practically the only right of the people guaranteed by the Constitution that would not be annihilated if this bill becomes law, is habeas corpus.

Suppose I own a little country store or farm. No matter whether I employ 6 or 60, Congress has no right to strike down my freedom of employment, nor theirs, because, nowhere in the Constitution has any such power been granted Congress.

Suppose I am a member of a labor union. I had been working for years at the craft of which I had become a master. But I never could seem to do better than "make ends meet." I talked to the boss. He knew all the answers, while I just knew my job. Finally, I heard about and joined a union. A mighty fine bunch of fellows. It was a fraternity. If a man was all right, straight, clean, honest, and the kind you could depend upon to give your widow and children a square deal, all of us would vote for him and we would make him one of us. It was an honor to be a member. We appreciated our membership and kept it clean. Some of our members studied and learned the answers like the boss. They talked for the rest of us and got us contracts that paid us more, and things were easier and happier.

Neither Congress, nor any other power can force me to vote to take the wrong kind of a man into the membership of our union, as long as this is a free country!

That is all I wanted to say except this: I go to the fountainhead and call your attention to our Lord and Saviour himself who in a sermon

gave us a parable about a labor dispute where several men were employed at different hours of the day. The employer's question was—and it has never yet been answered, and there is no answer to it in this bill: "Is it not lawful for me to do what I will with my own?" That is the question that has been ringing down the ages for 2,000 years; and you cannot take my job away from me and put somebody in it whether he be qualified or not merely because of the color of his skin.

ANTILYNCHING

I have studied this question as fully as any I have ever briefed. I have argued the unconstitutionality of this kind of legislation repeatedly on the floor of the House. It gives me pleasure now to discuss that point.

Each of you gentlemen of this subcommittee is a brilliant, distinguished leader of the bar of his State. You are honored representatives of your great States in the House and on its Committee on the Judiciary. So, I am happy, as was Paul before Agrippa, to answer for myself your question; feeling sure that I should be acquitted but for the inevitable appeal unto Caesar.

UNCONSTITUTIONALITY

Before beginning to set forth the constitutional objections against such legislation, please let me answer some of the attempts that have been made through the years to defend the constitutionality of such proposed legislation.

The proponents have always been diligent in combing the lawbooks, trying to find decisions that might be claimed to sustain their position. Not one has ever been found, for not one has ever been written. There are some, however, that, when not quoted in full, contain expressions which, when taken out of their contexts, may be used as the basis for tortured arguments specious pleaders may use and feed to those hungry for sustenance in an untenable position. The Congressional Record is full of these. It is amazing that from the beginning of the debates on this issue the proponents have always cited the same alleged authorities and have made the same arguments. The inapplicability of these alleged authorities, their fallacies when applied to this issue, and their lack of germanenes, have been just as often exposed and the arguments made from them demolished by the speakers for the opposition in every such debate.

There have only been four cases cited by proponents which are not "old stuff." Two were dug up and presented in the 1940 debate. Neither sustains the argument at all. The decisions were not read; only excerpts. One of them was a tax case. The books are full of decisions holding that taxes illegally collected may be recovered from the guilty county levying them, by suit. Of course they can. But this case was even stronger against the position trying to be maintained as in point on lynching than many other tax cases which did not contain a careless dictum which could be seized upon. The case cited was the case of 67 Indians who had been coerced into paying an unlawful exaction of taxes on lands exempt from taxation by Federal law and the Constitution of the United States. Every county is but the creature and arm of the State that created

it; so, when any county violates Federal law and Constitution, by making an illegal exaction of taxes, of course, that county may be compelled to make restitution of the money wrongfully taken, and the courts should and will so hold. The other case cited is just as bad. It was the case of an action on bonds and coupons in default; a suit to collect past due bonds and coupons issued by a county. In these two cases, therefore, no one could possibly dispute the fact that the offending county could be sued. Such suits have been approved since the foundation of our Government. These cases were disposed of by another dictum of Justice Brewer when he said, "I want to give you common sense instead of citations."

The only other two new decisions that have been cited are: *Crews* v. *United States* (160 Fed. (2d) 746); and *Screws et al.* v. *United States* (325 U. S. 91).

The fundamental fallacy and utter want of germaneness in each of these two decisions is that each of them reviewed a case arising under a Federal statute, section 20, United States Code, which is identical with section 52, United States Code Annotated. Both relate to the same section of title 18 of the United States Code numbered differently in different publications. The Crews case was decided by the Circuit Court of Appeals for the Fifth Circuit, April 5, 1947, and affirms the conviction of a sheriff indicated for violating the section of the Federal statute in question. The Crews case was decided by the United States Supreme Court, May 7, 1945, and reversed on certiorari the decision of the Circuit Court of Appeals for the Fifth Circuit, in which a decision of the trial court had adjudged a sheriff, a policeman, and a special deputy guilty of violating the same Federal statute. This reversal is predicated on the sole ground that the trial judge failed to submit to the jury the essential elements of the only offense on which the conviction could rest, to wit: willfulness of purpose to deprive the prisoner of a right under Federal law.

With reference to these two decisions, the point is that each of them construed a Federal statute that has been the law for many years, and which was designed to cover much of the same ground as these present lynching bills. It reads:

> SEC 52 (Criminal Code, sec 20) Depriving citizens of civil rights under color of State laws Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both.

The pending lynching bills seek to go further than this statute, although covering much of the same ground, and the only contention made in argument for their constitutionality is that they are validated by the fourteenth amendment of the Constitution of the United States.

THE CONSTITUTION ITSELF LIMITS THE POWER OF CONGRESS

Anyone who honestly seeks to answer the question of the constitutionality of any legislation must remember that the Constitution itself, in its very first article, first section, denies to Congress the un-

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limited grant of power it granted to the other two branches of the Government it created.

> The executive power shall be vested in a President of the United States of America (art. II, sec. 1)
> The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish (art. III, sec. 1).

But:

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives (art I, sec 1).

So, unless granted in the Constitution, there is no power to legislate.

LEADING TREATISES ON THE CONSTITUTION DISAGREE WITH PROPONENTS

While we all have the highest respect for the legal ability, the high moral character, and the sincerity of the gentlemen who hold the opinion that the Constitution of the United States has anything in it that might justify any one of these pending bills, we might respectfully insist that the leading authorities on the Constitution, Cooley, Rose, and Storey, each held and taught the contrary.

From page 831 of Cooley on Constitutional Limitations, I read the following:

> In the American constitutional system the power to establish the ordinary regulations of police has been left with the individual States, and it cannot be taken from them, either wholly or in part, and exercised under legislation of Congress Neither can the National Government, through any of its departments or officers, assume any supervision of the police regulations of the States All that the Federal authority can do is to see that the States do not, under cover of this power, invade the sphere of national sovereignty, obstruct or impede the exercise of any authority which the Constitution has confided to the Nation, or deprive any citizen of rights guaranteed by the Federal Constitution.

THE CONSTITUTIONAL CONVENTION DEFEATED SUCH PROPOSAL

Proponents of the kind of legislation under discussion are evidently under the mistaken impression that the resolution which was offered as the original fourteenth amendment in the Constitutional Convention of the United States was adopted. Whereas the truth is that it was defeated and voted down by that Convention. It read:

> Congress shall have power to make all laws which shall be necessary and proper to secure to citizens of each State all privileges and immunities of the citizens of the several States, and to all persons in the several States, equal protection of the right to life, liberty, and property.

The fourteenth amendment as it now stands was never adopted until the Tragic Era, as Claude Bowers calls the reconstruction period. And even then, although admittedly aimed at the States which had composed the Confederacy, and although none of them were allowed to participate in drafting it, it could not be adopted as it had been originally drawn during the 1787 Constitutional Convention. In its pertinent part it reads as follows:

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

There are none so blind as those who will not see the difference.

THE SUPREME COURT HAS REPEATEDLY HELD SUCH PROPOSALS UNCONSTITUTIONAL

Within 3 years after the adoption of the fourteenth amendment the Supreme Court in "the slaughterhouse" decision, said:

> There is no such authority unless it be in the fourteenth amendment

Having just quoted the pertinent part of the fourteenth amendment, I shall not repeat it.

If, then, the authority of Congress to legislate as now proposed be not found in the fourteenth amendment, it is nowhere.

I want to read to you from *Corrigan* v. *Buckley* (271 U. S. 329), about as clear a definition with regard to this whole matter as you will find condensed in one paragraph any place:

> Under the pleadings in the present case the only constitutional question involved was that arising under the assertions in the motions to dismiss that the indenture or covenant which is the basis of the bill is void in that it is contrary to and forbidden by the fifth, thirteenth, and fourteenth amendments This contention is entirely lacking in substance or color of merit. The fifth amendment is a limitation only upon the powers of the General Government and is not directed against the action of individuals The thirteenth amendment denouncing slavery and involuntary servitude—that is, a condition of enforced compulsory service of one to another—does not in other matters protect the individual rights of persons of the Negro race And the prohibitions of the fourteenth amendment have reference to State action exclusively, and not to any action of private individuals

State action of a particular character is that which is prohibited. Individual invasion of individual rights is not the subject matter of this amendment.

So much for that clear-cut definition by the Supreme Court of the meaning of the fourteenth amendment.

The case of *Barney* v. *City of New York* (193 U. S. 430) is a case which has been misunderstood and criticized but never overruled. It is still the law. It sets forth a principle of law which, to my mind, is of significant importance in the consideration of the constitutionality of the pending bills. It holds that an officer deriving his power from a State, who acts not only in violation of provisions of the State law but in opposition to plain prohibitions therein, is not as to such acts an agent of the State. In other words, when an officer acts against a State he cannot be said to be acting for the State. Such a person cannot defy a State, trample upon its laws, violate his oath of office and every principle of agency and still bind the State by his illegal conduct. This quotation from the opinion of the Court by Chief Justice Fuller is sufficient to give us the essence:

> Thus the bill on its face proceeded on the theory that the construction of the easterly tunnel section was not only not authorized but was forbidden by the legislation, and hence was not action by the State of New York within the intent and meaning of the fourteenth amendment, and the circuit court was right in dismissing it for want of jurisdiction.
> Controversies over violations of the laws of New York are controversies to be dealth with by the courts of the State Complainants' grievance was that the law of the State had been broken, and not a grievance inflicted by action of the legislative or executive or judicial department of the State; and the principle is that it is for the State courts to remedy acts of State officers done without the authority of or contrary to State laws.

This opinion goes on to quote from *Virginia* v. *Rives* (100 U. S. 313):

> But when a subordinate officer of the State, in violation of State law, undertakes to deprive an accused party of a right which the statute law accords to

him, as in the case at bar, it can hardly be said that he is denied, or cannot enforce, "in the judicial tribunals of the State," the rights which belong to him. * * * If, as in this case, the subordinate officer, whose duty it is to select jurors, fails to discharge that duty in the true spirit of the law, if he excludes all colored men solely because they are colored; or if the sheriff to whom a venire is given, composed of both white and colored citizens, neglects to summon the colored jurors only because they are colored; or if a clerk, whose duty it is to take the 12 names from the box, rejects all the colored jurors for the same reason, it can with no propriety be said the defendant's right is denied by the State, and cannot be enforced in the judicial tribunals The court will correct the wrong, will quash the indictment or the panel, or, if not, the error will be corrected in a superior court

Again the opinion in the Barney case quotes from the civil rights cases (109 U. S. 3):

In this connection 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.

The same opinion points out that the case of *Ex parte Virginia* (100 U. S. 339) is not in point as an authority against the holding then being made.

Appellant's counsel rely on certain expressions in the opinion of *Ex parte Virginia* (100 U S 339), but that was a case in which what was regarded as the final judgment of a State court was under consideration.

It should be borne in mind also that the action of Judge Coles in filling the jury box in the way he did was approved by the State of Virginia in substance and effect by the State's intervention in the proceeding and suing out of a writ of certiorari, in its own name, in an attempt to justify judge's actions—the case is known not as *Ex parte Coles* but as *Ex parte Virginia.*

This clear distinction between the Barney case and that line of authorities which by the undiscriminating are frequently cited as being in conflict with the decision in the Barney case is simply that the alleged agent, the Board of Rapid Transit Commissioners for New York, under its power delegated by the State of New York, was authorized to build certain tunnels, but not the easterly tunnel section. The building of that section was not only not authorized but was specifically forbidden. So there was no semblance of authority for the construction of the easterly tunnel section. The board did not exercise authority lawfully granted it, and in the exercise exceeded its authority; it violated the law of the State which it was sworn to uphold, and wholly without authority acted in opposition to plain prohibitions of the law by which it was supposed to be governed. Whereas in the case of *Ex parte Virginia* a judicial officer of that State whose acts in filling the jury box were fully authorized by the State simply exceeded his authority in the performance of his official duty by excluding the names of all Negroes; and apparently this overreaching of his authority by the judge was approved by the State, he was defended in it by the State, and his action was considered as the final judgment of a State court.

Similarly, in the case of *Home Telephone Company* v. *Los Angeles* (227 U. S. 278), while that opinion criticizes the opinion in the Barney case, nevertheless the two cases are not in conflict at all. In the Home Telephone Company case the State delegated to a commission the right to fix telephone rates, and the commission in the exercise of this authority fixed telephone rates, but the court held that the rates fixed were confiscatory and in violation of the due-process clause of the fourteenth amendment. But Los Angeles, through its officers, had perfect delegated authority to fix the rates. This fact clearly differentiates the Los Angeles case from the principle we are asserting. The same thing is true of the other authorities in this line, *Ex parte Young* (209 U. S. 123), which was a State railway rate case; *Raymond as Treasurer* v. *Chicago Union Traction Company* (209 U. S. 20), which was an action of the State board of equalization; *Iowa-Des Moines Banks* v. *Bennett* (284 U. S. 239, 246), where the court in explaining its decision again makes clear the distinction between this whole line of authorities and the Barney case:

Here the exaction complained of was made by the treasurer in the name of and for the State in the course of performing his regular duties; the money is retained by the State, and the judicial power of the State has been exerted in justifying the retention.

So the law of the Barney case still holds good and condemns these bills as absolutely unconstitutional; for, of course, every State has antilynching laws, and any peace officer of any State or county or other political subdivision who would fall to protect and defend to the limit of his power any prisoner within his custody would be violating the law of his State and acting in opposition to its plain prohibitions.

There is one case, however, as to which there has been no misunderstanding, and of which there has been no criticism. It was cited with approval recently by the Supreme Court of the United States in 271 U. S. at page 639. This case is the Harris case (103 U. S. 629). This case grew out of a lynching in the State of Tennessee, has never been qualified or questioned, and is absolutely decisive against the constitutionality of the pending bills. From the decision of the Court in the Harris case I quote the following exceedingly significant passage:

In the indictment in this case, for instance, which would be a good indictment under the law if the law itself were valid, there is no intimation that the State of Tennessee has passed any law or done any act forbidden by the fourteenth amendment. On the contrary, the gravamen of the charge against the accused is that they conspired to deprive certain citizens of the United States and of the State of Tennessee of the equal protection accorded them by the law of Tennessee.

As, therefore, the section of the law under consideration is directed exclusively against the action of private persons, without reference to the laws of the State or their administration by her officers, we are clear in the opinion that it is not warranted by any clause in the fourteenth amendment to the Constitution.

So the Supreme Court has spoken directly and positively on a lynching case and held that the Federal Government had no authority to enact a law of this character. After quoting many authorities, the Court, in the Harris case, concludes:

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

We might well stop our discussion of the law with this quotation from the Harris case, for it is unanswerable. But there are other cases on the subject of lynching also perfectly in point. The Riggins

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case (134 Fed. 409), wherein an Alabama judge wrote an opinion setting forth with preeminent clarity and ability exactly the same views which the proponents of this bill are voicing today, only to reverse his position and opinion after the decision of the Supreme Court of the United States in the Hodges case (203 U. S. 1) had been handed down shortly after the publication of his first opinion in the Riggins case. In the *Companion of Powell* (212 U. S. Repts. 564) this same Alabama jurist, Judge Jones, upon the strength of the Hodges decision, ordered the indictment against Powell quashed and the defendant discharged. The Government appealed to the Supreme Court of the United States from this decision of Judge Jones, but the Supreme Court upheld Judge Jones, saying that the Hodges case was decisive and that the Federal Government had no power, authority, or jurisdiction in such cases, even though they involved lynching.

These cases render further argument a waste of time on the subject of the constitutionality of this monstrous bill.

CONCLUSION

You may report one of these bills. It may pass. But there is no vestige of constitutional right for its report or passage. The House may constitute itself a mob to lynch the Constitution. Proponents have repeatedly forgotten their oath of office to support and maintain the Constitution, have mustered the necessary number of votes in the House. Should proponents in this campaign year play a repeat performance, they may have the votes, but they still have no right.

ANTISEGREGATION

[In the Supreme Court of the United States, October Term, 1949. No. 25, *Elmer W. Henderson, appellant, v United States of America, Interstate Commerce Commission, and Southern Railway Company, appellees*]

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

MAY IT PLEASE THE COURT:

The undersigned, a Member of the Bar of this Honorable Court and of the Committee on the Judiciary of the House of Representatives of the United States, at the suggestion of other Members of that Committee, respectfully moves this Honorable Court for leave to file a brief and participate in the oral argument of the above entitled cause.

SAM HOBBS,
As Amicus Curiae.

OCTOBER 21, 1949.

PRELIMINARY STATEMENT

The law of this case is clearly and succinctly stated in the briefs for the Interstate Commerce Commission and for Southern Railway Company.

The Committee on the Judiciary of the House of Representatives of the United States has never taken a contrary position; nor has the Congress or the Supreme Court of the United States.

The brief nominally filed for the United States is not a brief for that appellee and assumes the opposite position from that taken by those representing that appellee in the lower court.

This amicus curiae adopts the briefs of the attorneys for the other two appellees; and opposes the brief nominally filed for the United States.

QUESTION STATED

The sole question for decision on this appeal is whether or not the appellee carrier's rules regulating its dining car service, which became effective March 1, 1946, requiring equal but separate accommodations for white and colored passengers, subject the appellant to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Appellant won his case in the lower court when he attacked a former rule of the carrier; so only the rules which became effective March 1, 1946, are attacked in this case and involved in this appeal.

Or, as stated in the brief for Southern Railway Company, on Page 12, under the caption "The Question Presented for Decision",

> "The appeal brings to this Court for decision the question whether racial segregation of interstate passengers is forbidden by any provision of the Federal Constitution, the Interstate Commerce Act or any other Act of Congress, so long as there is equality of treatment of those of different races. The question arises under the rule of the Railway whereby the space in its dining cars is divided: one portion for the exclusive use of Negro passengers and the remaining part for the exclusive use of white passengers. It is the operation of the rule of the Railway that gives rise to the question for decision; not the segregation statute of the State of Virginia in which state the incident here in question occurred."

SUMMARY OF ARGUMENT

It is respectfully submitted that the pertinent rules of the Southern Railway Company are in accordance with the Supreme law of the land as declared by the Supreme Court and the lower courts. Not only so, but those rules are wise, for the best interests of all the people affected, and in accord with the highest ethical standard.

The purpose of regulation is not utterly to prohibit. The Southern Railway Company, to all practical intents, operates only in that region where anything more than is required by the rules here under attack would render its attempt to operate its railway system absurd. To adopt the contention of Appellant would be the kiss of death and render operation of the railway impossible.

These rules apply to all and should be obeyed by every passenger.

In Holy Writ we read: "Wherefore if meat make my brother to offend I will eat no flesh while the world standeth, lest I make my brother to offend." 1 Corinthians 8:13. Why should not both white and colored passengers in interstate commerce be willing to rise to the height of that highest ethical standard? Why should any passenger be unwilling to give that much consideration to his fellow passengers?

The Constitution of the United States granted complete and exclusive power to regulate interstate commerce to "The Congress". In the exercise of that power the Congress has repeatedly refused to require more than the rules in question indicate.

ARGUMENT

Judge Coleman, in writing the opinion of the majority in the lower court in this case said:

> ". . . (1) Racial segregation of interstate passengers is not forbidden by any provision of the Federal Constitution, the Interstate Commerce Act or any other Act of Congress as long as there is no real inequality of treatment of those of different races. (2) Allotment of seats in interstate dining cars does not per se spell such inequality as long as such allotment, accompanied by equality of meal service is made and is kept proportionately fair. This necessity was recognized by the Commission in its report on which the order now approved by us is based, when it said (269 I. C. C. 73, at page 76): 'Should the indicated trend continue, substantial equality of treatment may require the reservation of additional accommodations for Negroes in the future.' To the argument that proportionate allotment of tables is only just and equitable so long as persons may find seats at a table assigned to their respective races, and fails to meet the equality test when there is any empty seat in the dining car which a person of either race is forbidden to occupy, suffice it to say that this argument denies the very premise from which we start, namely, that racial segregation is not, per se, unconstitutional. Since this is true, we fail to see that a situation such as that just referred to produces a result any more unjust or inequitable from a legal approach—which must be this Court's approach to the question—than the no doubt common situation where both white and colored passengers may be kept waiting to secure seats at tables

allotted to their respective races, because, for the time being, every seat in the dining car may be occupied.

"For the reasons herein set forth the complaint must be dismissed." (R. 260.)

To the same effect is each of the six decisions cited and referred to in the Index to this brief and in the Simmons case it is said:

> "It must be repeated and steadily borne in mind that the power to regulate interstate commerce is vested in Congress. This power Congress has, within certain limits, delegated to the Interstate Commerce Commission. To what limits the powers of this latter body extend need not be inquired into. The fact remains that neither Congress nor any agency created by it has sought to impose any regulation dealing with the separation of passengers in interstate commerce. The fact that such separation has long been enforced in a number of states by custom and by the rules of common carriers operating in such states is a matter of public knowledge of which the members of Congress are fully aware. In fact, although efforts have been made over some years to induce Congress to enact legislation on this subject, it has consistently refused to attempt such regulation. There can be no other inference than that Congress has thought it wise and proper that the matter should be left for determination to such reasonable rules as the carriers might themselves adopt and that it considered that rules providing for the segregation of passengers in those sections where they were applied were reasonable ones. By its refusal to nullify the practices and regulations of these carriers in respect to the separation of passengers, Congress has by the strongest implication given its approval to them. This is a field of Congressional duty and responsibility. This court cannot invade it and, by usurping the powers of Congress, lay down rules by which this defendant must guide the operation of its business—rules which Congress, in the exercise of power specifically and solely entrusted to it, has refused to lay down." *Simmons* v. *Atlantic Greyhound Corp.*, W. Dist., Virginia, decided December 30, 1947, 75 F. Supp. 166.

Fourteen times the House has voted against antisegregation proposals.

The views taken by the Committee are amply borne out by speeches of Members of the House, as evidenced by their reproduction as Appendix A of this brief.

The briefs for the Interstate Commerce Commission and Southern Railway Company leave little to say. All pertinent cases, the Constitution, Statutes, history of this case, and the rules made by the railway have been cited and quoted. To prolong this argument would be but repetitious.

But in behalf of "The Congress" whose silence has been thunderous; whose Counsel in the instant case has abandoned its defense and espoused the alleged cause of its adversary; for "The Congress," to whom alone has been granted by the Constitution the power to regulate interstate travel; it must be said that the trust has been kept sacredly, and administered faithfully, for the best interests of all! "The Congress" confidently awaits the decision of this appeal, and the verdict of history!

CONCLUSION

I respectfully submit that this case should be affirmed.
Respectfully submitted.

SAM HOBBS.
Amicus Curiae.

APPENDIX A

THE HENDERSON CASE

Mr. GOSSETT. Mr. Speaker, I hope I may be pardoned for name calling, seeming exaggeration, and dealing in generalities. But this is a short speech, and the provacation for making it is great.

A new, little publicized, and dangerous assault is being made upon the dignity, decency, and security of this Republic. The Department of Justice, together with the CIO, is going before the Supreme Court in the Henderson case and is asking the Court to overrule the well-established law of this country and to declare the "separate but equal" facilities doctrine to be unlawful. The Department of Justice is acting in opposition to the Interstate Commerce Commission. The Department of Justice is asking the Supreme Court for antisocial legislation by judicial fiat. If the Supreme Court holds with the Department of Justice, and against the Interstate Commerce Commission, we will have, in effect, outlawed all forms of segregation. Racial pride and purity are virtues, not vices. The position taken by the Department of Justice would eventually mongrelize and bastardize all races within this country to the degradation, shame, and destruction of all races. This assault, is launched either through malice or ignorance. Those responsible are either villains or fools.

Could it be that the great Department of Justice is becoming a political adjunct of those who would pander to ignorance and prejudice in order to purchase votes at the sacrifice of principles?

In the first place, the Department of Justice has no business intervening in the Henderson case. In the second place, it is an insult to the Supreme Court to openly seek to wring from it social legislation instead of sound judicial decision. Let us hope the Court will live up to its honorable traditions and will not be a party to nefarious schemes that would undermine and destroy this Nation.

THE HENDERSON CASE

Mr. COLMER. Mr. Speaker, and Members of the House, I hope you will pardon me in this deviation from my usual conduct here with reference to the matter of making 1-minute speeches. I am provoked into this deviation by an editorial which appeared in the morning Washington Post attempting to justify the unusual and inconsistent conduct of the Department of Justice in interfering in the case now pending in the Supreme Court between a publicity-seeking Negro, on the one hand, and the Interstate Commerce Commission, on the other.

The decision of the Interstate Commerce Commission holding that the Southern Railroad did not violate its regulation in the Henderson case was upheld by a Federal district court requiring passengers to be segregated, but providing for equal accommodation in the railway's dining cars.

If I understand the duty of the Department of Justice, that duty requires that the Department of Justice enter a case, if it enters at all, on the side of the Interstate Commerce Commission and the Federal courts; but, substantiating the charge that the Justice Department has become the political arm of the administration's political philosophy, we find it injecting its strong arm into this case in an effort to have the highest Court of the land reverse itself and the law of the land in order to carry out the political philosophy of the administration in racial matters.

More than that, Mr. Speaker, we have here a spectacle of the Department of Justice attempting to persuade the Supreme Court, by judicial fiat, to decree what the Congress, the legislative body of the Government, has refused to legislate.

This is but another evidence of the bold and brazen effort of those now in charge of our Government to obtain by indirection what Congress has refused to do. For, if the Court yields to this political interference of the Department of Justice, and upholds its views, segregation in all forms, in our hotels, in our picture shows, in all public and private places, is at an end, another cherished right of the individual—choosing his own associates—is denied.

It is indeed alarming in this connection, Mr. Speaker, to note that the Department of Justice, which is supposedly charged with upholding our form of government, and opposing such modern isms as communism, sees fit to cite statements made by Soviet representatives, in support of the Russian effort to break down segregation in this country, as it does on page 61 of its brief before the Court.

It is unthinkable, the Washington Post to the contrary notwithstanding, that the members of the Supreme Court, regardless of their own varying degrees of so-called liberality, will accede to this type of political propaganda. I rather believe that that body will adhere to the view that this Government is composed of three independent departments, and that legislation in social, as well as other human relations, is a matter entirely within the province of the Congress.

HENDERSON AGAINST INTERSTATE COMMERCE COMMISSION

Mr. BRYSON. Mr. Speaker, Members of the House, particularly those of the legal profession, will be especially interested in a case now pending before the United States Supreme Court entitled "Henderson Against Interstate Commerce Commission and Others," docketed as No. 25.

From a cursory reading of the pleadings, it readily appears that an intentional attempt is being made to bypass the Congress of the United States and have a judge-made law. It seems that there are those who have no hesitancy in deliberately violating the specific constitutional provisions establishing the three distinct branches of our Government.

No possible barrier to segregation in interstate travel can be found in our Constitution. Repeatedly the courts have held that separate but equal facilities in travel are all that may be required. The purpose of the pending case is to seek a judicial determination to the effect that only the same facilities will fully meet the issue. Surely the Court will never adopt the extreme views now sought to be established as the law of the land. Let it be remembered that the Congress itself, the only lawmaking agency in the Government, has consistently refused to adopt the radical, unreasonable view taken in the incident case.

Should this new doctrine on segregation be allowed, it might well follow that all efforts to preserve any separation of the races, including marriage, shall be thwarted. Surely those who continue to harangue, harass, and divide us know not what they do.

THE HENDERSON CASE

Mr. HERLONG. Mr. Speaker, seldom during this first session of the Eighty-first Congress have I risen to give voice to my feelings on matters of the public interest. Rather, I have felt that I could accomplish more and contribute just as much by listening and learning from those who have become grizzled and gray through years of experience and whose wisdom I recognize and respect. The action of the Department of Justice, representing the United States as codefendant in the Henderson case in not only declining to defend the case but actively participating in an attempt to reverse the judgment of a specially constituted District Court in and for the District of Maryland, however, prompts me to add my voice to those of my distinguished colleagues who feel that such action is beyond the realm of precedent or reason. I have carefully read the brief filed by the Solicitor General, Mr. Perlman, on behalf of the United States, and as a Member of Congress I cannot but resent the attempt of the Justice Department to ask the highest court in our land to usurp legislative functions and write new law to take the place of the regularly enacted legislation of this Congress This Congress has repeatedly, during this session, expressed itself on he question of segregation. One of the more notable instances was when an attempt was made to eliminate segregation in the housing bill. This proposal was overwhelmingly defeated. Other such attempts during this session have also been defeated.

I could discuss at great length the practical and humane arguments in favor of segregation in the Southland, and feel confident that with a fair opportunity to present evidence to people whose minds are not closed through fear of loss of political support, I could show the impracticability of handling this problem in the South at this time in a manner different than it is now handled. I could show through the testimony of many hundreds of Negroes themselves that they not only do not desire, but bitterly resent this interference by outsiders who have nothing but misinformation and outright misrepresentation and no personal knowledge whatsoever of the true conditions existing in the Southland. I could tell you in detail how professional troublemakers come into the South, and on the pretext of securing information and writing eyewitness news stories, so grossly distort the real facts as to make them unrecognizable when they appear in print.

As an example of how these people operate and attempt to poison the minds of the people in the North against the South, there was a case in my home county recently in which three Negro boys were convicted of raping a young bride. An attempt was made in some of the northern papers to give the wrong impression of what actually happened by reporting that the defendants were convicted by an all-white jury. These subsidized specialists in scuttling the South did not say in their story that the prosecution on behalf of the State of Florida in that case went far beyond the requirements of the law in insuring to the defendants a fair trial. They did not say that there were Negroes on the jury panel in the same proportion as there were Negro registered voters, and most of them are registered voters and vote in that county; they did not say that when the name of a Negro juror was drawn he would be excused by the defense—not the prosecution but the defense—on a peremptory challenge on some frivolous ground, so that they would be able to say after the case was over that it was

tried by an all-white jury; they did not say in the story that the State attorney excused, on peremptory challenges, several good white jurors in an attempt to get to Negro jurors, and found whenever he did get to them that the defense did not want them to serve.

After the trial was over and the three defendants were convicted, the jury recommended mercy for one of the defendants and he was sentenced to life imprisonment. The other two received no such recommendation. Even though the prosecution had tried all the cases together, the defense then claimed that the two who were convicted without recommendation of mercy did not receive a fair trial. But they agreed that the one who received a recommendation of mercy did receive a fair trial; these stories have not said that after the trial one of these defendants asked to talk with the officers and in a voluntary statement, which was recorded, stated, in effect, that he was more than pleased with the outcome of the case, that all of them were guilty, that he had told a false story at the trial because the defense attorneys had told him that his only chance of getting off would be to lie about the true facts; as a matter of fact, a greater effort was made on the part of the defense attorneys to inject a discrimination issue into the trial than there was to actually defend the case.

This practice of distorting the facts has been going on for years. This is not the first time that it has happened. But the people in the South have just listened and ignored them, choosing to consider the source from which they came. But when the Solicitor General's office injects itself in an effort to give strength and dignity to this type of activity, then it is no longer a trivial matter. It is time to let the people everywhere know the true facts.

But as important as the segregation question is, this Henderson case strikes even deeper than that. Here is the result of an attempt, inspired and prompted by these same talented triflers with the truth, to persuade the Solicitor General's office to endorse the transfer of the legislative functions of the Congress over to the courts. The Congress has repeatedly spoken to the contrary In the brief of the Solicitor General's Department they admit that even precedent in the courts is against their position, but they urge that the precedent, the decision in the case of Plessy against Ferguson, has been determined erroneously and that the doctrine of that case should now be reexamined and overruled. As you know, the customary procedure is that Congress enacts legislation. If it is not clear or there is any question about the intent of Congress, it goes to the courts for interpretation. If the interpretation follows the true intent of the Congress it remains the law of the land until changed by the Congress. If the interpretation goes afield from the intent of the Congress, further clarifying legislation is presented so that the real intent of the Congress is the law. Several times during this session we have been asked to vote on measures designed to correct a decision of the Supreme Court in order to insure that the true intent of Congress is actually the law. This precedent, which they desire now to have overruled, was decided in 1895. Since that time many Congresses have met and adjourned It seems to me that if the Supreme Court had erroneously interpreted the intent of Congress, there has been ample opportunity in these 54 years to clearly set out the real intent by statutory law. The reason it has not been done is simply because the decision was correct, the opinion of the Solicitor General to the contrary notwithstanding.

I hope this Congress will jealously guard its policy-making prerogative. Our legislative authority should not be usurped.

SEGREGATION

Mr. WILLIAMS. Mr. Speaker, I shall not use all of my time. I merely wish to add my thoughts to the remarks of the distinguished gentleman from Florida, who preceded me. To do justice to the subject would take hours.

Mr. Speaker, I have always understood that our Government was composed of three branches, with certain specific powers delegated to each by the Constitution. It has been my belief that the duty of the legislative branch was to enact and repeal laws, and the duty of the judicial branch to review and pass upon the constitutionality of legislation enacted by the legislative branch.

This belief, apparently, is not held by the Justice Department. For it is today asking the Supreme Court to assume legislative powers and authority not granted to it under the Constitution.

The Justice Department, in the so-called Henderson case, is asking the Supreme Court to legislate judicially that which the House and the Senate have consistently refused to act upon.

The Justice Department has asked the Supreme Court to set aside its age-old, tried and true, "separate but equal" theory in regard to racial segregation in favor of complete abolition of segregation.

I have always understood it to be the duty of the Justice Department to defend the orders of the Interstate Commerce Commission—the defendant in this case—as well as to represent other agencies of Government in matters of litigation.

In complete disregard of its duties, the Justice Department has organized its legal facilities in a fight against a companion agency in the Government rather than defend it. They seem to have contracted the same "minority" disease that has swept the world ever since Russian communism became a world philosophy, and Russia became a world power. The Justice Department has completely surrendered to the Communists, the radicals, the fellow travelers, the pinks, and the punks.

Who are those who stand behind the Justice Department in this suit? Are they the great mass of American people? Or are they blocs of selfish interest groups intent upon forcing their will upon the American people, whether they like it or not?

Briefs have been filed in this case on the side of the appellant by the CIO—which hopes to use the Negro as a club with which to whip the American people into submission; the National Association for the Advancement of Colored People—a radical organization which for years has directed its activities toward stirring up racial strife in the North as well as the South; the AVC—an off-brand pink and Communist flavored alleged veterans' organization which has caused nothing but trouble since it was organized; and the National Lawyers' Guild—another red outfit.

There is no demand from the Negroes of the South for this kind of ruling—that is evident. Yet we know that these Communist organizations always point to the southern Negro as the one who is suffering from segregation. There is no doubt about the part that politics is playing in this suit, and I hope that the Court will not allow itself to be degraded to the level on which the Justice Department seeks to place it. There is no demand for the American Bar Association for the outlawing of segregation; there is no demand from the bona fide reputable veterans' organizations for such a ruling. There is no demand from Congress—it has had the opportunity for years to outlaw segregation legally and constitutionally There is no demand in the Constitution of the United States for the abolition of segregation.

The Justice Department knows this—they also cannot be blind to the disastrous effects upon our Nation that would occur from the abolition of segregation. Yet they are willing to barter the peace, good will, and welfare of our people for the miserable political advantage which might accrue from their action.

Listen to this, taken from the brief of the Justice Department in this case:

> What we seek is not justice under law as it is.
> What we seek is justice to which law, in its making, should conform.

Where is the authority of the Supreme Court to interpret the law—not on the basis of what it is, or what it is intended to be—but rather to draw from the law what is not in it, and make it conform to what they think should be in it?

The present law on the subject of segregation can be changed under the Constitution only by Congress, or the people. The Supreme Court cannot make laws, or change laws—the Justice Department should know that.

A reading of the brief filed by the Justice Department in this case will show that the authorities cited therein are not legal authorities, but are from propaganda leaflets, lay commercial publications—and, particularly Russian and Communist books and periodicals. The kind of brief filed by the Justice Department in this case would insult the intelligence of any backwoods justice of the peace. The Supreme Court should resent this assault upon their integrity, ability, and intelligence.

Here are a few, but typical, of the authorities cited by the Justice Department in support of their fantastic contentions:

First. Native Son, a fictional novel by Richard Wright, a Chicago Negro.

Second. Caste and Class in a Southern Town—another lay article, making a prejudiced, biased attack upon the decent and God-fearing people of the South.

Third. The Negro Ghetto, by Weaver, enough said.

Fourth. Negroes in Brazil, by Pearson.

Fifth. Can the Negro Hold His Job?—from a bulletin of the NAACP, one of the uninvited meddling participants in the case.

Sixth. The Bolshevik.

Seventh. Nationalism—Tool of Imperialist Reaction, written in Russia by a Communist writer named Frantsov.

Eighth. The Soviet Representative to the United Nations, who is cited many times throughout the brief.

Ninth. The Literary Gazette, an official publication of the United States of Soviet Russia.

Tenth. An American Dilemma, by Myrdal, and so forth and so on.

In filing this brief, the Justice Department has sunk to the lowest levels in history. They are being cajoled into a violation of their oaths by monstrous groups intent upon destroying our Democratic form of government, our people and our Nation.

The Constitution of the United States very carefully avoided any reference to segregation. In the fourteenth amendment, giving the Negroes equal rights with whites, there is no mention of segregation, and it cannot be inferred that it was intended that segregation should be abolished. We know that granting equal facilities and equal opportunities to Negroes is right and necessary in order to meet the requirements of democracy. But must we amalgamate our people in order to meet those needs? To allow such a thing to happen would be to betray our country and its glorious history. We cannot allow these power seekers to mongrelize our people through a forced amalgamation of the races. To do that would bring on national suicide, as it did for Greece, for Rome, for Egypt, and for all of the other great empires of the past.

Why was mention of segregation not made in the Constitution? Listen to the words of Thomas Jefferson:

> "Nothing is more certainly written in the book of fate than that these people"—

Meaning the Negroes—

> "are to be free; or is it less certain that the two races, equally free, cannot live in the same government."

Perhaps Jefferson went further along those lines than we should go today. But he did reflect the thinking of the writers of our Constitution, who recognized the incontrovertible fact that a mongrel America cannot live in peace; nor can a mongrel America hold the respect of the world.

Abraham Lincoln, champion of the Negro, admitted—and I quote:

> "A separation of the races is the only perfect preventive of amalgamation; but as an immediate separation is impossible, then the next best thing is to keep them apart where they are not already together."

Segregation is admittedly the only solution to the Negro problem, if such a problem exists. This Congress can pass laws from now until doomsday, and the Supreme Court can render limitless decisions outlawing segregation, and attempting to force upon both white and black an integral society. But until such time as people of both races are willing to intermingle socially, these laws and decrees could and would be of no value whatsoever. On the other hand, they could result only in bloodshed and strife.

Do the Negroes want to intermingle socially with the whites? Certainly not in my section of the country. If they did, then, of course, there would be no Harlem in New York, and no South Side in Chicago. Joe Louis would not be opening his exclusive colored restaurant in Detroit next week.

It was a Negro—the greatest of them all—who uttered the philosophy which has been followed by our courts, our Congress, and our people down through the years. The words of Booker T. Washington will live as long as civilization itself:

> "In all things which are purely social, we can be as separate as the fingers; yet one as the hand in all things essential to mutual progress."

Segregation has obtained in this country for so long a time that it has become an established tradition or institution. It has been approved, not only by the people who established it, but by the courts and the Congress. Suddenly, the highest tribunal in the land is called upon to sweep away the bulwark existing in our social and political orbit. They are being asked to deny to our people the fundamental constitutional right of a continuation of this established, approved, and successful practice.

America has grown great and all powerful under our time-honored social and political system. There is a reason for this: The people have an inherent right to shape their own respective destinies. The architects of our dual system of

constitutional government purposefully retained in the people themselves, through their duly elected representatives, the right to legislate laws, repeal laws, and inaugurate policies for the general welfare of all the people. Nowhere can that right and authority be found except in the legislative—and not the judicial—branch of our Government.

The philosophy and practice of segregation had its origin in the teachings of the Apostle Paul in his ministry to the Jews, Greeks, gentiles, Romans, and all peoples everywhere. His doctrine is found recorded in the seventeenth chapter of Acts, twenty-sixth verse:

> "And hath made of one blood all nations of men for to dwell on all the face of the earth, and hath determined the times before appointed, and the bounds of their habitation."

I am confident that the Supreme Court will promptly affirm the decision of the lower court. To do otherwise, would be to encroach upon the rights granted to Congress under the Constitution of the United States.

THE HENDERSON CASE

Mr. DAVIS of Georgia. Mr. Speaker, I have noted with interest the remarks made in recent days on the floor of the House by Messrs. Gossett, of Texas; Colmer, of Mississippi; Herlong, of Florida; and Williams, of Mississippi, calling attention to a brief filed by the Solicitor General of the United States in the case of Henderson against the Interstate Commerce Commission et al., pending in the Supreme Court of the United States.

There is nothing unusual about the case in itself. It does not present a new issue. It is one of many cases in which attacks in the past have been made in the courts upon segregation laws—an effort to have the courts substitute for existing law a new provision which is not law, and which cannot become law under our system of government, unless appropriate and constitutional action is taken by the legislative department of our Government, upon whom the responsibility rests to make legislative changes; namely, the Congress of the United States.

The courts have consistently refused to assume lawmaking powers in connection with this question.

The circumstance connected with the filing of this brief which is unusual is the fact that the Solicitor General of the United States has permitted radical minority pressure groups to use him and the prestige of his office in their conniving efforts to pressure the United States Supreme Court into changing the law.

Briefly stated this case originated when the plaintiff, a field representative of the so-called Fair Employment Practice Commission, petitioned the Interstate Commerce Commission to require a railroad to completely eliminate segregation of white and colored passengers in its dining car.

The Interstate Commerce Commission dismissed the complaint. A three-judge district court held that the existing regulations were prejudicial, in that certain tables were only conditionally reserved for colored passengers, whereas all other tables in the car were unconditionally reserved for white passengers. The case then was remanded for further proceedings not in conflict with that ruling.

Pursuant to that ruling and regulations were changed to provide for tables to be reserved unconditionally for colored passengers just as tables were reserved unconditionally for white passengers. The seats unconditionally reserved for colored were almost twice the percentage of colored travel on the railroad as compared with the proportionate percentage reserved for white passengers

That regulation was upheld by the Interstate Commerce Commission and by the district court of the United States, and was appealed by the plaintiff to the Supreme Court.

The law in question is established law, recognized, followed and complied with for many years. It was applied to the instant case and upheld by the proper agency of the Government, the Interstate Commerce Commission, whose ruling was confirmed by the district court of the United States.

The action of the Solicitor General in this case is nothing more nor less than an attempt to aid the plaintiff in this case in trying to overturn the present established law, and to substitute therefor as law a new and radical doctrine, through the process of judicial legislation.

Contrary to the position and to the action of the defendant, the Interstate Commerce Commission, this brief undertakes to confess judgment in the case, and to aid the efforts of the plaintiff and the radical groups associated with him

in an effort to nullify the functions of Congress and to secure a change in long-established law by judicial legislation.

The Solicitor General, with no authority to do so, undertakes to announce the policy of the United States by stating:

> "Since the United States is of the view, however, that the order of the Interstate Commerce Commission is invalid, this brief sets forth the grounds upon which it is submitted that the judgment of the district court is erroneous and should be reversed."

The Solicitor General does not have the authority to frame or to announce the policy of the United States with reference to legislative matters. These functions are performed by the legislative department of the Government; namely, the Congress. In another portion of the brief the effort is made to have the Supreme Court discard existing law, a function which clearly does not belong either to the executive or judicial department, but is a function and responsibility to be exercised, if at all, by the legislative department, the Congress. The portion referred to is as follows:

> "If this Court should conclude that the issues presented by this case cannot be considered without reference to the 'separate but equal' doctrine, the Government respectfully urges that, in the half century which has elapsed since it was first promulgated, the legal and factual assumptions upon which that doctrine rests have been undermined and refuted. The 'separate but equal' doctrine should now be overruled and discarded."

That is what I would consider a brazen request. The Congress of the United State is now in session. There are bills pending before Congress involving the precise question in this case; namely, abolition of segregation. The Congress is the proper arm of Government to enact such legislation, or to refuse to enact it. The Congress has during this present session, on more than one occasion, specifically refused to change the segregation laws, and it is nothing less than brazen effrontery for the Solicitor General to ask the judicial department of the Government to overrule and discard the law which now exists, which Congress has refused to do.

The so-called brief, in its list of citations, contains almost 2 pages, of references to such things as Black Metropolis, by Drake and Caton; Psychodynamic Factors in Racial Relations, by McLean, Negroes in Brazil, by Pearson; and Color, Class, and Personality, by Southerland, to support the radical position adopted The effort of the Solicitor General and his two assistants to speak for the United States, and the Government, in this matter reminds me of the three tailors of Tooley Street who called themselves, "We, the people of England—."

Others joining in this outrageous attempt to high pressure the Supreme Court, and to bypass Congress, in the effort to secure "judicial legislation," are the radical, discredited National Association for the Advancement of Colored People, the American Veterans Committee, equally as radical and equally as much a stench in the nostrils of good Americans, and the CIO, some of whose racketeer leaders have violently resisted all efforts of the Congress and the American people to force that organization to purge itself of admitted and acknowledged communistic members and influence All three of these groups—the NAACP, the AVC, and the CIO—are ardent advocates of that unconstitutional, radical monstrocity known as the FEPC bill.

The Congress has steadfastly declined to pass that bill, although these radical groups have clamored loudly and insistently for it. Many States of the Union have likewise refused to pass it. If this conniving conspiracy, aided and abetted by the Solicitor General, should be able to secure this piece of "judicial legislation" which they seek to do in the case under consideration, it is not improbable that they would work out some scheme to carry another case to the Supreme Court and ask that branch of the Government to enact an FEPC law.

If the Supreme Court can discard segregation law, which the Congress itself has refused to do, it can also discard the constitutional safeguards which protect us from such radical monstrosities as the FEPC bills.

I hope that the Supreme Court of the United States will recognize this maneuver for what it is, and that that body will stay within its appropriate sphere with reference to this law and all other laws.

I recently quoted in a speech a statement made by Donald R. Richberg, in an address he made on July 29, 1949, to the Virginia State Bar Association at its annual meeting. I would like to repeat that quotation here. It is:

> "As an active practitioner, and a prospective teacher, of constitutional law, I must make a clear distinction between what the law is and what the law ought to be. The Supreme Court is the final arbiter of what the law is. But

the people are the final arbiters of what the law ought to be and eventually shall be. If they believe that the National Government should have and exercise greater powers to promite the general welfare, they will find the way to enlarge its authority. If they believe that more local self-government is essential to their liberties and their pursuit of happiness, they will find the way to enlarge the authority of the States and the municipalities."

So long as the three departments of our Government, namely the legislative, the executive, and the judicial, remain separate and independent, and each performs those and only those duties which devolve upon it, our Government can withstand all assaults which may be made upon it, whether from without or from within.

This is what protects us from dictatorship. This is what preserves our Government as a Government of laws and not a Government of men.

This is our system of checks and balances under which one department of Government may be restrained by the other two departments from assuming powers which do not belong to it. Time has demonstrated that the maintenance of this separate and independent status is necessary.

Any effort on the part of any one of these departments to usurp or exercise functions properly belonging to another should be promptly and effectively squelched.

It is true that there is abroad in the world today a school of thought which has attracted to itself some support in certain quarters that new laws must be devised upon every subject—that there is no wisdom or virtue in laws already in existence. This impatient school of thought must have immediate change in everything, and if Congress refuses to jump when the spur is applied, then other and quicker means must be devised to bring about the desired change.

It is to protest against such attempted action that I am making these remarks today. I would call to the attention of the House this little verse written many years ago:

In vain we call old notions fudge
And shape our conscience to our dealing.
The Ten Commandments will not budge,
And stealing will continue stealing.

There are certain fundamentals which are not affected by the passage of time. One of these is that the Supreme Court of the United States cannot discard valid existing laws. Any request by any person that the Supreme Court perform such an act is outrageous, should not be viewed with equanimity, and should not be countenanced either by the people, by the Congress, or by the Supreme Court.

There is a widespread demand throughout the country now for economy in the operation of the United States Government. Much complaint has been made that the Government has far too many people upon its various pay rolls, and that it is possible to prune these pay rolls and reduce appropriations, which in turn will result in reduced taxes. If the office of the Solicitor General is now staffed to the point where the Solicitor General and two of his subordinates can take time to read and digest the number of books about psychology, psychodynamic factors in racial relations, Negroes in Brazil, and enough more to fill up almost two pages of citations, and cite these books and writings as authority in a supposed brief of law, then I think it is high time for the Appropriations Committee and the Congress to see if that is not one place where some pruning may be done with good effect to that department, to the taxpayers, and to all concerned.

APPENDIX B

CONSTITUTION

Article I, Section 8. "The Congress shall have power * * * to regulate commerce with foreign nations, and among the several states, and with the Indian tribes;".

APPENDIX C

(R 7-8, 223, 252)

WASHINGTON, D. C., *February 19, 1946.*

Transportation Department Circular No. 142
Cancelling Instructions on this Subject Dated July 3, 1941, and August 6, 1942
SUBJECT: SEGREGATION OF WHITE AND COLORED PASSENGERS IN DINING CARS.
To: Passenger Conductors and Dining Car Stewards.

Consistent with experience in respect to the ratio between the number of white and colored passengers who ordinarily apply for service in available diner space, equal but separate accommodations shall be provided for white and colored passengers by partitioning diners and the allotment ot space, in accordance with the rules, as follows:

(1) That one of the two tables at Station No. 1 located to the left side of the aisle facing the buffet, seating four persons, shall be reserved exclusively for colored passengers, and the other tables in the diner shall be reserved exclusively for white passengers.

(2) Before starting each meal, draw the partition curtain separating the table in Station No. 1, described above, from the table on that side of the aisle in Station No. 2, the curtain to remain so drawn for the duration of the meal.

(3) A "Reserve" card shall be kept in place on the left-hand table in Station No. 1, described above, at all times during the meal except when such table is occupied as provided in these rules.

(4) These rules become effective March 1, 1946.

APPENDIX D

49 U. S. C. Sec. 3, par. 1

(1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: provided however, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

Mr. BYRNE. This closes the hearings and this matter is now at an end.

We will adjourn sine die.

(At 3:15 p. m., the committee adjourned.)

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T-10/10/58

HHG:DRO:rar

P. Wilson White
Assistant Attorney General
Civil Rights Division

Harold H. Greene
Chief, Appeals and Research Section

Little Rock Air Force Base School

This memorandum will briefly describe the statutory scheme whereby the new public school in Pulaski County, Arkansas was authorized to be built at federal expense to accommodate dependents of Air Force personnel of Little Rock Air Force Base. Particular reference will be given to the federal Government's interest in such school.

20 U.S.C. 271, et seq., provides for a scheme whereby local school agencies may receive grants-in-aid to alleviate the burden placed on local facilities because of the heavy concentration of federal activities in the area. Under a complex formula, the proportionate (or total) cost of constructing a local public school building is borne by the federal Government. 1/ Such schools, however, are administered by the local educational agency. 2/ 20 U.S.C. 278 provides that there will be no federal supervision or control of such schools.

> "In the administration of this chapter, no department, agency, officer, or employee of the United States shall exercise any direction, supervision, or control over the personnel, curriculum, or program of instruction of any school or school system or any local or state educational agency." 3/

1/ The procedure for obtaining grants in aid has been revised by PL 85-620, August 12, 1958, but the basic policy remains the same.

2/ There is a provision for building and operating a federal school on federal property where there are no suitable local facilities. 20 U.S.C. 274.

3/ 20 U.S.C. § 242 has a similar provision relating to grants in aid for purposes of operation and maintenance of public schools in federal impacted areas.

cc: Records
Chrono
Greene (3)
Owen

The plan now is to operate the Little Rock Air Force Base School on a segregated basis notwithstanding the fact that--according to newspaper reports--approximately 10% of the Air Force dependent children in the area will be Negroes when the housing project is completely filled. 4/

It would seem that section 278, while it does prohibit federal supervision or control, would not prevent some action (administrative and/or legal) on the part of the federal government to require that the school be operated on a non-discriminatory basis. However, one objection to any sort of legal action would be that the proper remedy is to cut off the federal grants in aid rather than to enforce non-discrimination. This objection might be valid under the statute which provides for continuing financial assistance for operation and maintenance (20 U.S.C. 231). But when the question involves school construction and the building itself has been constructed entirely with federal funds to accommodate families living in an Air Force housing project, such a remedy is ineffective to protect that financial interest; the pecuniary outlay has been made. Presumably no additional federal funds would go into the project for construction purposes.

Furthermore notwithstanding section 278 it is clear that the grants-in-aid statute forbids discrimination against federally connected children as such. 20 U.S.C. 275 (b) (1) (f) provides that the application submitted by the local education agency for federal assistance shall make the following assurance.

"

> "Assurance that the school facilities of such agency will be available to the children for whose education contributions will provide in this subchapter on the same terms, in accordance with the laws of the state in which the school district of such agency is situated, as they are available to other children in such school district". 5/

4/ One news report states that the project presently, August 23, 1958, houses only two Negro families whose children are of pre-school age. However the October issue of the Southern School News reports that a Negro sergeant sought to enter his six-year-old daughter in the school; admission was denied and the sergeant has applied for a transfer to another station.

5/ 20 U.S.C. 275 (c) (1) has a similar provision for application for reimbursement with respect to schools already constructed.

This provision would seem to require that the school district not discriminate against federally connected children as such. However the legislative history of the provision indicates that Congress did not by this provision intend to prevent discrimination on the basis of race. See H.R. Rep. No. 2810, 81st Congress, 2nd Sess. (U.S.C. Cong. Serv. 81st Cong., 1st Sess. pp. 3819-20.) where the committee states:

> "This provision is intended as a safeguard against discrimination directed against categories of children mentioned in the bill as such, but it is not intended to disturb classification on jurisdictional or similar grounds, or patterns of racial segregation established in accordance with the laws of the state in which the school district is situated." 6/

This statute passed in 1951 in effect sanctioned any pre-existing racially discriminatory practice or at least did not forbid it. The Act was amended in the last session of Congress. P.L. 85-620, 72 Stat. 548. The same provisions appear in the new statute but there is no reference in the reports as to the question of racial discrimination. See U.S.C. Cong. Serv. 3176, 3184. 85th Cong. 2d Sess.

It should be noted that the local educational agency must in effect give assurances that federally connected children will not be discriminated against as such. It would seem that at least since the integration decision in the Brown case the only permissible bases for not sending all federally connected children to the schools constructed by federal funds would be classification or jurisdictional grounds. Obviously any law or practice of a state providing for segregated schools would be patently unconstitutional in the light of the Brown decision. The federal district courts approve the timetable for integration, but even so failure to place all federally connected children in the school except for valid reasons might be a breach of the assurence given by the local educational agency.

6/ The report is to the same effect with respect to section 275 (c) (1).

Thus it might be argued that the federal government could require the school board or local educational agency to allow "all" (Negroes included) dependent children of school age in the area to attend the school built specifically for them by federal funds, unless there were valid jurisdictional or classificational grounds for not doing so. Otherwise, the objective of the scheme of grants in aid could be at least partially frustrated by local authorities. For implicit in the aid program is the recognition that the federal government has an interest in the health, education and welfare of its employees and their dependents.7/

Yet even here it may well be argued that the proper remedy is not to force integration, but to seek reimbursement from the local agency of funds used in breach of the assurance.8/ Such a course of action, if it were deemed advisable, might have a remedial effect.

Obviously this possible remedy is not only as efficacious as one designed to insure a change of status of the school into that of a desegregated one, but it is also somewhat undesirable from the public relations point of view. If the decision were to be reached that the federal government has a sufficient legal standing to object to the present segregated use made of the school, then it would seem more appropriate to invoke first administrative action designed to achieve this result. For example, the Commissioner of Health Education and Welfare could make the position of the Executive Branch clear to the local school authorities and exert whatever pressures are available to him to achieve the desired result. If these efforts prove to be unsuccessful then consideration might be given to court action designed to enforce compliance with the statutory mandate that there be no discrimination against federally-connected children. The theory of such an action of course would be that by not permitting the federally-connected Negro children to attend

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7/ Apparently, the local school board recognized the federal interest for it sought to obtain agreement by the Air Force in its decision to operate the school on a segregated basis. The Air Force agreed and informed its personnel accordingly.

8/ Compare 20 U.S.C. 277 where the Commissioner can refuse to certify further payments until all assurances are complied with, and if that is impossible until such local agency repays federal money improperly diverted.

the school the local educational agency was not carrying out its obligations.

It must be recognized, however, as a basic proposition that the statutes involved do not contemplate any federal influence over local school board policies no matter how obnoxious such policies might appear to the federal government. This certainly was the intention of the framers of the statutes and it may prove to be rather difficult to demonstrate the contrary even in this extreme situation if the matter ever came to a court test.

However, this policy militating against federal interference would not necessarily seem to foreclose some form of federal action in this particular factual situation.

90TH CONGRESS
1ST SESSION

H. R. 1217

IN THE HOUSE OF REPRESENTATIVES

JANUARY 10, 1967

Mr. RYAN introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide protection against lynchings.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PURPOSE

SECTION 1. The provisions of this Act are enacted in exercise of the power of Congress to enforce, by appropriate legislation, the provisions of the fourteenth amendment to the Constitution of the United States, and for the purpose of better assuring under such amendment equal protection and due process of law by the several States to all persons charged with or suspected or convicted of any offense within their jurisdiction.

DEFINITIONS

SEC. 2. (a) Whenever two or more persons shall knowingly in concert (1) commit or attempt to commit violence upon any person or persons or on his or their property because of his or their race, creed, color, national origin, ancestry, language, or religion, or (2) exercise or attempt to exercise, by violence against person or property, any power of correction or punishment over any person or persons in the custody of any governmental officer or employee or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such person or persons, or of imposing a punishment not authorized by law, such person shall constitute a lynch mob within the meaning of this Act. Any such action, or attempt at such action, by a lynch mob shall constitute lynching within the meaning of this Act.

(b) The term "governmental officer or employee", as used in this Act, shall mean any officer or employee of a State or any governmental subdivision thereof, or any officer or employee of the United States, the District of Columbia, or any territory, possession, or other area within the exclusive jurisdiction of the United States.

PUNISHMENT FOR LYNCHING

SEC. 3. Any person whether or not a member of a lynch mob who willfully instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, and any member of a lynch mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $10,000 or by imprisonment not exceeding twenty years, or by both such fine and imprisonment.

PUNISHMENT FOR FAILURE TO PREVENT LYNCHING

SEC. 4. Whenever a lynching shall occur, any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent the lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to prevent the lynching, and any officer or employee of a State or governmental subdivision thereof who shall have had custody of the person or persons lynched and shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all

diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynch mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

DUTY OF THE ATTORNEY GENERAL OF THE UNITED STATES

SEC. 5. Whenever a lynching of any person or persons shall occur, and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent the lynching or protect such person or persons from lynching, or who shall have had custody of the person or persons lynched, has neglected, refused, or willfully failed to make all diligent efforts to prevent the lynching or protect such person or persons from lynching, or that any officer or employee of a State or governmental subdivision thereof, in violation of his duty as such officer or employee, has neglected, refused, or willfully failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynch mob, the Attorney General of the United States shall cause an investigation to be

made to determine whether there has been any violation of this Act.

COMPENSATION FOR VICTIMS OF LYNCHING

SEC. 6. (a) Every governmental subdivision of a State to which the State shall have delegated police functions shall be responsible for any lynching occurring within its territorial jurisdiction. Every such governmental subdivision shall also be responsible for any lynching which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction, irrespective of whether such lynching occurs within its territorial jurisdiction or not. Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each individual who suffers injury to his or her person as a result of such lynching, or to his or her next of kin if such injury results in death, for a sum of not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided, however,* That the governmental subdivision may prove by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and the citizens thereof, when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further,*

That the satisfaction of judgment against one governmental subdivision responsible for a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching.

(b) Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part. Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or, if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such governmental subdivision. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of

kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(c) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district which he may designate in such order, except that no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

KIDNAPING

SEC. 7. Section 1201 (a) of title 18, United States Code, is amended by inserting immediately after "otherwise" the following: "(including any person unlawfully abducted and held for purposes of punishment, coercion, or intimidation)".

90TH CONGRESS
1ST SESSION

H. R. 1217

A BILL

To provide protection against lynchings.

By Mr. RYAN

JANUARY 10, 1967

Referred to the Committee on the Judiciary